SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AND VETERANS' REEMPLOYMENT RIGHTS

JOINT HEARING

BEFORE THE

COMMITTEES ON VETERANS' AFFAIRS

OF THE

HOUSE OF REPRESENTATIVES

AND

UNITED STATES SENATE

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CONTENTS

September 12, 1990

Page

Soldiers' and Sailors' Civil Relief Act and Veterans' Reemployment Rights 1

OPENING STATEMENTS

Cranston, Hon. Alan, chairman, Senate Committee on Veterans' Affairs 7
    Prepared statement of Senator Cranston 64
Montgomery, Hon. G.V. (Sonny), chairman, House Committee on Veterans' Affairs 1
    Prepared statement of Chairman Montgomery 59
Murkowski, Hon. Frank H., ranking minority member, Senate Committee on Veterans' Affairs 103
Smith, Hon. Christopher H. 3
Specter, Hon. Arlen 12
Stump, Hon. Bob, ranking minority member, House Committee on Veterans' Affairs 3
    Prepared statement of Congressman Stump 66
Thurmond, Hon. Strom 6

WITNESSES

Collins, Hon. Thomas E., Assistant Secretary for Veterans Employment and Training, Department of Labor 15
    Prepared statement of Mr. Collins 95
Duncan, Hon. Stephen M., Assistant Secretary of Defense, Reserve Affairs, U.S. Department of Defense 11
Engelstad, Robert J., senior vice president, mortgage and lender standards, Federal National Mortgage Association 47
    Prepared statement of Mr. Engelstad 137
Gilman, Hon. Benjamin A., a Representative in Congress from the State of New York 32
    Prepared statement of Congressman Gilman 101
Gramley, Lyle E., senior staff vice president and chief economist, Mortgage Bankers Association of America 54
    Prepared statement of Mr. Gramley, w/attachment 167
Grigley, Donald W., senior vice president, Connecticut National Bank, representing the American Bankers Association and the Consumer Bankers Association 52
    Prepared statement of Mr. Grigley 147
Hultman, Maj. Gen. Evan L., AUS (ret.), executive director, Reserve Officers Association of the U.S. 37
    Prepared statement of General Hultman 108
Jackson, Charles R., executive vice president, Non Commissioned Officers Association of the U.S.A. 38
    Prepared statement of Mr. Jackson 115
Jehn, Hon. Christopher, Assistant Secretary of Defense, Force Management and Personnel, U.S. Department of Defense 9
    Joint statement of Mr. Jehn and Mr. Duncan 71

Page
Johnson, Col. Erik, Jr., USA (ret.), director of legislative affairs, Association of the U.S. Army 36
Prepared statement of Colonel Johnson 105
Kennedy, Judith A., vice president, government affairs, Federal Home Loan Mortgage Corporation 55
Prepared statement of Ms. Kennedy 177
Lowery, Hon. Bill, a Representative in Congress from the State of California 4
Prepared statement of Congressman Lowery 67
O'Toole, J. Denis, executive vice president for government affairs/operations, United States League of Savings Institutions 49
Prepared statement of Mr. O'Toole 142
Principi, Hon. Anthony J., Deputy Secretary, Department of Veterans Affairs, accompanied by D'Wayne Gray, Chief Benefits Director 13
Prepared statement of Mr. Principi 87
Weber, Lt. Gen. Lavern E., (ret.), executive director, National Guard Association of the U.S. 40
Prepared statement of General Weber 119

MATERIAL SUBMITTED FOR THE RECORD

Documents:

CRS memorandum No. 1—To Michael Cogan, from Brian W. Cashell, re inflation adjustment to rent relief provision of the Soldiers and Sailors Civil Relief Act of 1940, August 27, 1990 232
CRS memorandum No. 2—From Robert B. Burdette, re The Interest Rate Cap of the Soldiers' And Sailors' Civil Relief Act of 1940 as amended, August 27, 1990 233
"Legal Assistance Guide: Soldiers' and Sailors' Civil Relief Act," JA 260, prepared by Legal Assistance Branch, September 1990 238

Statements:

Conaway, Lt. Gen. John B., chief, National Guard Bureau, U.S. Air Force. 208
Faigle, John N., Rear Admiral, chief of readiness and reserve, U.S. Coast Guard 189
Fink, Nelson L., legislative assistant, military and government relations, Air Force Sergeants Association 226
Gaffney, Jonathan, national legislative director, AMVETS 212
Gonzalez, Henry B., chairman, full Committee on Banking, Finance and Urban Affairs 179
Hill, Arthur J., president, Government National Mortgage Association, U.S. Department of Housing and Urban Development 221
Hughes, Thomas J., president and chief executive officer, Navy Federal Credit Union 185
Marsh, Hon. John O., Jr., chairman, Reserve Forces Policy Board, Office of the Secretary of Defense 217
National Military Family Association 230
Schroeder, Hon. Patricia, a Representative in Congress from the State of Colorado 181
Ward, Maj. Gen. William F., chief, army reserve, Department of the Army 193
Zuver, Charles O., senior vice president and director of Governmental Affairs Credit Union National Association; James W. Rowe, president/CEO, Defense Credit Union Council 196

Written committee questions and their response:

Hon. Alan Cranston to Mortgage Bankers Association of America 403
Hon. G.V. Montgomery to Mortgage Bankers Association of America 405
Hon. G.V. Montgomery to U.S. Department of Labor, Jan. 4, 1991 408
Hon. G.V. Montgomery to U.S. Department of Labor, Feb. 8, 1991 414
Hon. Alan Cranston to U.S. Department of Labor 418
Hon. G.V. Montgomery to Federal National Mortgage Association (Fannie Mae) 420
Hon. Alan Cranston to Federal National Mortgage Association (Fannie Mae) 422
Hon. G.V. Montgomery to American Bankers Association 426

Page
Written committee questions and their response—Continued
- Hon. G.V. Montgomery to National Association of Federal Credit Unions.. 429
- Hon. G.V. Montgomery to Federal Home Loan Mortgage Corporation (Freddie Mac)........ 433
- Hon. Alan Cranston to American Bankers Association 435
- Hon. G.V. Montgomery to Department of Veterans Affairs........ 439
- Hon. Alan Cranston to Department of Veterans Affairs 444
- Hon. Bob Stump to Department of Defense........ 450
- Hon. Alan Cranston to Department of Defense 456
- Hon. Alan Cranston to Federal Home Loan Mortgage Corporation........ 462
- Hon. Alan Cranston to United States League of Savings Institutions 465

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AND VETERANS' REEMPLOYMENT RIGHTS

WEDNESDAY, SEPTEMBER 12, 1990

House of Representatives,
and the U.S. Senate
Committees on Veterans' Affairs,
Washington, DC.

The committees met, pursuant to notice, at 9 a.m., in room 334, Cannon House Office Building, Hon. G.V. (Sonny) Montgomery (chairman of the House Committee on Veterans' Affairs) presiding.

Present: Representatives Montgomery, Applegate, Evans, Penny, Staggers, Rowland of Georgia, Harris, Kennedy, Patterson, Jontz, Payne, Parker, Jones, Long, Geren, Stump, Wylie, Smith of New Jersey, Bilirakis, Rowland of Connecticut, James, and Stearns.

Also present: Senators Cranston, Thurmond, and Specter.

OPENING STATEMENT OF HON. G.V. (SONNY) MONTGOMERY, CHAIRMAN, HOUSE COMMITTEE ON VETERANS' AFFAIRS

The Chairman. The joint committee will come to order, and the Senators will be here in just a few minutes.

Mr. Ed Scott is the new general counsel of the Senate Veterans' Affairs Committee. Mr. Steinberg went up as one of the associate judges on the Court of Veterans Appeals.

Ed, we are certainly glad to work with you and look forward to accomplishing a lot for the veterans.

The committee will come to order.

If we are going to address hostilities in the Persian Gulf, which is certainly justifiable, and elsewhere abroad, then we must make absolutely certain that our service personnel are provided not only the necessary resources for such action but appropriate civil relief while they are serving; this is only right.

Often in such type of a crisis, attention is focused toward the military perspective—the equipment, climate, conflict—as, in this case, the line in the sand. This is understandable, but it should not draw attention away from the people's perspective, the ones whom we ask to serve and the problems they encounter as a result of being called up, mainly talking about reservists.

This morning, the House and the Senate Veterans' Affairs Committees are holding a joint hearing on the Soldiers' and Sailors' Civil Relief Act. A little known law, this was written and passed back during World War II, and I don't think it has been amended since. This act is designed to provide certain protections and relief to individuals called to Active duty and who serve all over the world.

The very nature of military service often makes it difficult for some servicemembers to fulfill their financial obligations and to assert many of their legal rights. In many cases, members of the Reserves and National Guard must leave their families and their jobs on short notice, creating and abrupt change in their lives that could cause major financial problems should their military pay be less than they are earning in civilian life, and that is the key to this this morning; the military pay has to be less than they are earning in civilian life to trigger in this Soldiers' and Sailors' Civil Relief Act.

In addition, we have invited witnesses to present their views on the adequacy of the law which gives veterans the right to return to their jobs upon returning from Active duty, and certainly this is important. When you leave, your job should be there with your employer.

The President of the United States, George Bush, has called up 47,000 National Guardsmen and Reservists, and in my opinion, as we stay over there longer—and that is basically what he said last night, we are going to stay the course—the longer we stay there in the Persian Gulf, in my opinion, more reservists will be called to Active duty and would be affected under this type of law that we are considering today in this review.

So we have had many calls from Reservists and National Guardsmen. They have come into the Armed Services Committee; they have come into our committee. Under the Code, this act comes under the Veterans' Affairs Committee as far as amending this code.

In this joint hearing, we will have an opportunity to hear from the VA, DOD, and the Department of Labor on the major provisions of these laws, whether they should be amended—maybe they don't need to be amended—and what is to be done to inform Active duty and reserve personnel of the protections available to them under the law, and I might make it clear, Active duty do come under this law.

We also will hear from two other panels of witnesses representing military associations and the financial community.

Since 1940, protection also has been extended to the citizen soldier who leaves civilian employment to serve in our Nation's armed services by preserving the former serviceman's right to return to his or her pre-service employment; I mentioned that earlier.

We are hoping that this hearing will clarify some of the complex issues that have been highlighted in the press during the past few weeks, and I welcome all the witnesses this morning. We thank you for the large turnout that we do have in the committee. I am sorry we don't have enough chairs. Maybe we can find you more, better places to watch these proceedings.

[The prepared statement of Chairman Montgomery appears on p. 59.]

The Chairman. Now I would like to recognize the ranking minority member, Bob Stump from Arizona.

OPENING STATEMENT OF HON. BOB STUMP, RANKING MINORITY MEMBER, HOUSE COMMITTEE ON VETERANS' AFFAIRS

Mr. STUMP. Thank you, Mr. Chairman.

Mr. Chairman, of all the Members of Congress, you have long been recognized as the leader and the champion of Military Reserves and the National Guard as well as watching out for the welfare of each of their members. I would just like to commend you for your leadership and interest and for calling this meeting this morning. I apologize to you and the other members of the committees, and our witnesses, but I have to leave in a few minutes; we have a leadership meeting with the ranking members, so I have to leave early.

Mr. Chairman, I do have a statement that I would like to submit for the record. Thank you, Mr. Chairman.

The CHAIRMAN. Without objection, it will be received.

[The prepared statement of Congressman Stump appears on p. 66.]

The CHAIRMAN. Mr. Chris Smith of New Jersey.

OPENING STATEMENT OF HON. CHRISTOPHER H. SMITH

Mr. SMITH OF NEW JERSEY. I appreciate the recognition, Mr. Chairman.

Mr. Chairman, I am pleased to have the opportunity to examine the Soldiers' and Sailors' Civil Relief Act and Veterans' Reemployment Rights. Naturally, this is a very timely hearing and one which I believe is absolutely necessary in order to ensure that the men and women called to Active duty in Operation Desert Shield are ensured adequate rights and protections back home.

Many individuals affected by the recent call-up, either directly or indirectly, are unsure of how to deal with its impact on their personal lives. Some are not aware of the benefits they are entitled to, and many may not know where to get the answers. They are keenly aware, however, that they are still trying to pay their bills with, in many cases, considerably smaller paychecks.

The Soldiers' and Sailors' Civil Relief Act was enacted, as you pointed out, Mr. Chairman, back in 1940 to protect service men and women from certain liabilities during their period of Active duty service. Rightly so, the act provides for protections in the payment of debts, rents, or mortgages, insurances, and taxes.

Since the act was written at a time when our country was very different, both economically and socially, some of the provisions are fairly dated and perhaps needing revision.

Mr. Chairman, we have asked reservists to take leave of the lives that they are accustomed to and adapt to significant changes in income as well as life style. We have the responsibility, I believe, to ensure that these changes are reasonable and do not impose unrealistic demands on the men and women sacrificing for our country.

Many reservists now on Active duty will be returning to their jobs at the end of their service obligation. We need to ensure that employers extend to these veterans reemployment rights as guaranteed by the Veterans' Reemployment Act. We are aware that in some cases veterans have not been afforded these benefits but have had little recourse to remedy this.

This hearing, I believe, will give us the opportunity to examine provisions in the Veterans' Reemployment Act and the Soldiers' and Sailors' Civil Relief Act, to tailor the law, and perhaps to make some accommodations, changes and reforms with regard to this legislation. I look forward to the witnesses, and I would like to join my colleagues in welcoming Mr. Lowery to our committee today.

The CHAIRMAN. Thank you.

Other statements will be put in the record, and the Chair recognizes the gentleman from California, Bill Lowery.

STATEMENT OF HON. BILL LOWERY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LOWERY. Mr. Chairman and distinguished members of both the House and Senate committees, I want to commend you for your foresight, your caring, and your understanding in scheduling this hearing, and I appreciate the opportunity to testify before you.

Our Reserve forces are having problems now, and they absolutely must be addressed. In my own home town newspaper in San Diego, there was a recent message to reservists from a California bank. It read: "To ease worries and lessen hardships resulting from an abrupt loss of income, Wells Fargo Bank is immediately suspending personal loan payments for activated reservists.

"While on Active duty, you will not have to make principal or interest payments on Wells Fargo home mortgages, auto loans, credit card balance, or personal loans and lines of credit incurred before activation."

That bank is to be commended. But not all lenders and landlords will follow suit, and there is a serious possibility that some reservists will not be able to make rental or mortgage payments in full while pulling in a lesser salary.

Part of your focus today will be the Soldiers' and Sailors' Civil Relief Act of 1940, which anticipates some of the problems associated with a call-up and attempts to soften consequences. If you are a home owner and are called to duty, it is possible for you to maintain your home for your family without fear of foreclosure during your time of duty and 3 months afterwards, but if you are renter, you are afforded protection for 3 months under the act—3 months only—and then only if your rent per month is below $150.

Mr. Chairman, in San Diego we have a successful program for the homeless that allows for what is called single room occupancy in renovated downtown hotels. The fair market rate for those single rooms is about $350 per month. A standard two-bedroom apartment in the same approximate area rents for $666, according to the San Diego Housing Commission. Yet the Soldiers' and Sailors' Civil Relief Act of 1940 offers protection from eviction for the family of a reservist only if the rent is less than $150 per month. That would hardly pay for a plot of ground where you could put a tent.

I commend this committee for taking a look at this obsolete legislation. It seems to me that if we are going to offer relief to the homeowner for the entire period of time while they are serving their country, we can offer that same relief to those who rent. I have introduced a bill that calls for that change to existing law. I believe it is a first step toward what you will do today in examining the 1940 act.

In addition, I have heard from many reservists who wonder why they do not qualify for the variably housing allowance that comes to their Active duty counterparts. Let me just give you one example. There is a reservist hospital man, second class, working at the Belvoir Naval Hospital. In civilian life, he is a licensed physical therapy assistant. He took an immediate pay cut of $600 a month with the President's call up, but he also receives between $200 and $300 less than his Active duty coworkers because they receive a variable housing allowance due to the high cost of living in the San Diego area.

Currently, the law allows a reservist to collect a variable housing allowance only after 140 days of Active duty. My legislation would allow the reservist to collect a variable housing allowance if it applies in his area after 30 days on Active duty at the call of the President.

The President has asked our reservists to leave their jobs to serve side by side with our Active duty personnel. Many will fulfill their duty to their country while neglecting their jobs, their families, their commitments. I hope that as you review pertinent legislation you will concur in the need to seek some relief for our reservists. Our young men and women should not be penalized for answering the call to defend their Nation.

I just returned from Saudi Arabia, where the Active duty troops were upset. Their morale was high, but they were upset at the fact that they are not receiving their separate ration allowance which reduces their family income from anywhere to $80 to $180 per month, and this is not being offset by combat pay. But that is a subject for another committee hearing, unless, of course, we activate the reservists.

Once again, I thank the chairman and members for this opportunity to appear before you, and, if it would be appropriate, I would be happy to take any questions.

[The prepared statement of Congressman Lowery appears on p. 67.]

The **Chairman**. Thank you very much, Bill Lowery.

I think a couple of those requests you made certainly are reasonable and could probably be answered by our next witness panel, Secretary Jehn and Secretary Duncan of the military. A couple of the bills you have introduced would come under the Armed Services Committee.

Pertaining to the pay and how you would lose pay when you went to Saudi Arabia by losing your separate rations, I think we are working that out. We hopefully will correct that situation, and perhaps the two secretaries can tell us what they have done. That was a big complaint: "I lost money coming overseas, being in this sand, and this hot, hot place, and I can't buy any stamps to mail letters home." So we think we can correct that.

But you point out some other good areas, and we will certainly look into that.

Mr. **Lowery**. Mr. Chairman, I thank you, and let me just say that our sailors, airmen, marines, and soldiers certainly shouldn't have to pay a financial penalty to go to the defense of their Nation, and I would hope administratively we could work out the separate rations penalty that they are now undergoing.

Thank you, Mr. Chairman.

The **CHAIRMAN**. Thank you very much.

Senator Strom Thurmond would like to make a statement. We would certainly like to welcome Strom. He is always good about—where veterans' matters are concerned—comming forward on their behalf.

Senator Thurmond.

OPENING STATEMENT OF HON. STROM THURMOND

Senator **THURMOND**. I wish to thank my good friend, Chairman Sonny Montgomery, for allowing me about 2 minutes at this time.

Mr. Chairman, it is a pleasure to be here to receive testimony on this important issue, the recent activation of the National Guard and Reserve units and the benefits and rights to which these members of the Armed Forces are entitled.

I am pleased that representatives from the Department of Veterans Affairs, the military organizations, and the affected lending institutions will be testifying today.

Mr. Chairman, I want to commend you for scheduling this hearing. It is important for the men and women who have been called to duty to know that their interests are being protected.

Currently, there are two laws within the jurisdiction of the Veterans' Affairs Committee that provide benefits for those reservists called to Active duty. The first is the Soldiers' and Sailors' Civil Relief Act which promotes our national defense efforts by providing for forbearance and reduce the interest and obligations incurred prior to service, and which also provides for limitations on default judgments against these members of the Armed Forces or their dependents.

Under this act, the Department of Veterans Affairs guarantees payment of life insurance premiums and other important protections. These protective measures allow National Guards and Reservists to devote their full effort to the cause of defending this Nation without the additional burden of concern for the welfare of their family.

The second area of the law which would be addressed today relates to veterans' reemployment rights. This section of the law provides servicemembers the security of knowing that they will be able to return to their civilian employment upon completion of their military mission. Veterans' reemployment rights ensure that the vital service of these men and women in reserve status remains a strong contribution to the defense of our Nation.

Mr. Chairman, on the other angles that will be considered, knowing you as I do, I am certain they will receive careful consideration. We must give every consideration to our soldiers, men and women, who are serving now in the Persian Gulf desert. It is important that they receive every consideration under the law and maybe some new laws if necessary.

Mr. Chairman, I thank you very much for allowing me to go at this time. I regret, I have got another appointment and have to leave to go to another committee meeting.

The **CHAIRMAN**. Thank you. We certainly understand that. It is a long way over here, Strom, and, as I said earlier, you are right there when veterans need you, and thank you for coming over.

The Chair would like to recognize the cochairman of this joint hearing today, Alan Cranston, who is the chairman of the Senate Veterans' Affairs Committee and who had a very nice ceremony last night for Jon Steinberg.

Alan, we would like to hear from you.

OPENING STATEMENT OF HON. ALAN CRANSTON, CHAIRMAN, SENATE COMMITTEE ON VETERANS' AFFAIRS

Senator **CRANSTON**. Thank you very much, Sonny. I appreciate the opportunity to appear with you and the others who are present.

At the outset, I want to thank you for inviting the Senate in order to make this very important, very timely hearing a joint one of the House and Senate Committees. I am grateful to those of you who agreed, on very short notice, to testify also on the important matters we will consider today. Due to time constraints, I will keep my remarks brief. I have a longer, more detailed statement which will be in the record and which is available at the press table.

The **CHAIRMAN**. Without objection.

Senator **CRANSTON**. Having just returned last week from a four-day trip to the Middle East, which included a stop in Saudi Arabia where I witnessed the situation first hand—incidentally, I was there with Sonny Montgomery; we were together in the Gulf—I can say without question that our presence in the Middle East is not only justified but, unfortunately, altogether necessary. Many servicemembers with whom I met expressed concerns about how their Active duty might affect their ability to meet financial obligations and to regain their jobs after their service. As veterans in past conflicts who have fought and sacrificed for America and all that it stands for, our servicemembers today stand ready to answer the call. We must ensure that their sacrifice does not impose any unnecessary hardship on their lives or on their families.

The Soldiers' and Sailors' Civil Relief Act that we will consider today was enacted by Congress back in 1940 to protect individuals called to Active duty. It is intended to promote the national defense by suspending enforcement of civil liabilities of servicemembers in order to enable them to devote their entire energies to the defense needs of the Nation. For example, the Act provides for forbearance and reduced interest on certain obligations incurred prior to service and restricts default judgments against servicemembers and rental evictions of servicemembers and their dependents.

Veterans also receive reemployment protection under chapter 42 of title 38, the Veterans' Reemployment Rights, which establishes certain rights for those called to duty through induction or reserve mobilization to regain their jobs with their former employers.

Our two Committees' review of these laws and the protections provided by them—and whether these protections are sufficient—certainly is timely, as we begin a mobilization of up to 47,000 members of the National Guard and Reserve. We must ensure that the laws of our country adequately protect the brave men and women who have so readily taken on the role of guardians of freedom.

Let me speak for one moment on a related but separate matter. In the Gulf, the service people that I met with have very high morale. They have one cry: "Please get more mail to us." Some have not yet heard from home during the time they have been over there. I urge all who know anyone there to write frequently and get other people to write.

I have suggested two ways to speed up communications there. One, I proposed, and Saturday or Monday the Senate adopted, an amendment to the Treasury and Post Office bill providing that service people in the Gulf need not use a stamp to write home but can simply have what amounts to a franked envelope. We have done that in the past, we should do it for them, and, Sonny, I would like to urge you and others to make sure that stays in that bill, the Treasury and Post Office bill, when it is dealt with in conference between the House and Senate.

Secondly, I am working on a plan that I think will be announced within a few days which I have discussed with General Schwarzkopf and then with others to arrange a situation where people can fax communications over there to their loved ones. That can mean almost instantaneous communication, something brand new. AT&T has taken the lead in putting this together, volunteering a lot of equipment and service, to make it work, and there will be an announcement shortly on that. I think it is a wonderful way to increase communications back and forth between here and home and loved ones over there.

Again, I thank all of today's witnesses, I look forward to your testimony, and thank you, Sonny.

[The prepared statement of Senator Cranston appears on p. 64.]

The CHAIRMAN. Bob Stump said the faxing would beat the V mailing that we used to have years ago. That is supposed to be the fastest way to get mail over there.

Those are excellent suggestions you made, Alan. Thank you.

On our first panel this morning—we have three panels, I might point out to members of the committee—we have the Honorable Chris Jehn, who is the Assistant Secretary of Defense for Force Management and Personnel. With him is Stephen Duncan, who is the Assistant Secretary of Defense for Reserve Affairs. And we have our old friend from the Veterans' Department, Tony Principi, deputy secretary. With him is General D'Wayne Gray, chief benefits director. And from the Department of Labor, Tom Collins, the assistant secretary for veterans employment and training. We will just take them in the order that I have called the names out.

We have asked you to limit your remarks to less than 10 minutes. It would certainly help us, because we will start moving into the armed services bill on the Floor by 10 o'clock, and we will have some votes, I am sure, in the next 30 or 40 minutes after that. So if we could move along with the hearing, it would certainly help all of us.

Secretary Jehn.

STATEMENTS OF HON. CHRISTOPHER JEHN, ASSISTANT SECRETARY OF DEFENSE, FORCE MANAGEMENT AND PERSONNEL, U.S. DEPARTMENT OF DEFENSE, ACCOMPANIED BY STEPHEN M. DUNCAN, ASSISTANT SECRETARY OF DEFENSE, RESERVE AFFAIRS

STATEMENT OF HON. CHRISTOPHER JEHN

Mr. JEHN. Thank you, Mr. Chairman. Thank you for this opportunity to discuss the Soldiers' and Sailors' Civil Relief Act, a law that has a major impact on the quality of life of our military personnel.

I am joined today by the Assistant Secretary of Defense for Reserve Affairs, Mr. Stephen M. Duncan. I will discuss the Soldiers' and Sailors' Civil Relief Act; Mr. Duncan will address veterans' reemployment rights, and health affairs.

We would first like to recognize both of you, Mr. Chairman, and the other Members of Congress who joined you, for using part of your August recess to make the arduous trip to the Middle East to visit our military men and women there. You recognize, as do we, and as should every citizen of our Nation, the sacrifices they are making. We deeply appreciate your gesture of respect for their efforts, and we join them in thanking you for making the trip and thus showing them, by your action, the gratitude of their country.

The Soldiers' and Sailors' Civil Relief Act has been an essential ingredient in the total quality of life package for our military men and women and their families for 50 years now. Whether they know it by name or not, they use its provisions daily in every duty station around the globe to mitigate the disruption that military service unavoidably brings to their personal affairs. In fact, because some provisions of the act are used so often and so routinely, we sometimes take it for granted until dramatic events, such as those going on in the Middle East today, again bring it to the forefront.

The act is not perfect, and some provisions may need to be updated, but the act works exceedingly well. Therefore, we shouldn't tamper with it unless there is compelling need to do so, and then only very carefully, to ensure that what we do fits well within its careful balance.

So far, we have received no reports of problems under the act from those being called to Active duty, but many won't use most of the provisions of the act for some time. So it is far too early for us to pass definitive judgment on how helpful it will prove to be to them. We may later learn that certain changes would be beneficial, but we have not learned that yet.

However, our daily experience with the act over the years has identified a need for amendments in a number of areas. Four areas give us most concern. First, section 520: This section sets forth certain rules that must be followed before a default judgment may be entered against a servicemember in military service. The technical issue needing resolution is whether a letter to the court from the servicemember or the member's legal assistance attorney should be considered an appearance. At least one court has so held. We are working on a proposed amendment to the act to clarify this point.

Second, section 521: This section sets forth certain rules regarding stays of court proceedings for servicemembers while in military service. As in the default judgment section I just mentioned, the issue needing clarification here is whether a letter from a servicemember, or the member's legal assistance attorney, notifying the court of the member's military service and requesting the protections of this act, should be considered an appearance by the court. Again, our judgment is that Congress did not intend this result, and we are working on an amendment similar to that for the default judgment section to clarify this point.

Third, section 526: This section, which has probably gotten the most press attention so far, establishes a maximum rate of interest of 6 percent for all obligations and liabilities of a servicemember undertaken before entering military service, provided the servicemember's ability to pay a higher interest rate is materially affected by military service. The cap of 6 percent may no longer be appropriate, and questions have arisen concerning whether the interest that is not paid while in military service is forgiven or merely postponed. We understand the Congressional Research Service has concluded Congress intended the interest be permanently forgiven. Whether the interest rate is compound or simple interest is also not addressed in this section.

We are studying these issues to determine what changes should be made to the act to address them.

Finally, since the act was drafted at a time when credit use and credit protection received far less attention than today, it should be updated to address credit protection. We believe servicemembers should not suffer any damage to their credit standing of any type merely for asserting rights bestowed by the Congress in this act. We are therefore drafting an amendment to expressly state this important point.

Last, section 530: This section provides protections against eviction of servicemembers, or their families, if the agreed upon rent is $150 or less. Originally, the act used an $80 limitation. In 1966, Congress raised that limitation to the current $150 figure. Obviously, that figure is unrealistic in today's rental market, and we are working on an amendment to bring that figure up-to-date and also provide an adjustment mechanism to ensure that it continues to reflect prevailing rentals over time.

In summary, the Soldiers' and Sailors' Civil Relief Act is a vitally important law, and it is essential to the quality of life of our service men and women and their families. Its importance is highlighted when Selected Reserves are called up and would become even more evident in the event of mobilization, but that does not mean it is not important in more peaceful times as well.

Military personnel and their families depend upon its provisions to some extent every day in a wide variety of settings all over the world. The act rather nicely demonstrates the ability of Congress to skillfully balance different interests. It should only be amended when compelling need requires and then only after careful thought.

We are developing legislation to make some amendments that are needed to clarify the act, and we ask that you give them careful consideration. We look forward to working with you on all of these points.

Thank you.

[The joint statement of Mr. Jehn and Mr. Duncan appears on p. 73.]

The CHAIRMAN. Thank you, Mr. Secretary.

Steve, did you have a statement?

STATEMENT OF HON. STEPHEN M. DUNCAN

Mr. DUNCAN. Mr. Chairman, I am very pleased to join my colleague, Mr. Jehn from Defense, and our other colleagues. I will be brief, since we do have a prepared statement, but I would like to focus on a couple of important issues.

As you well know, Mr. Chairman, in the early 1970's, the Department of Defense adopted what we have referred to for several years as the Total Force Policy. Under that policy, we plan for the integrated use of both Active and Reserve forces. The effect of the policy has been to place a substantial proportion of our total military force in the Reserve components. As a result, the Reserve components have been assigned both demanding wartime missions and peacetime responsibilities.

Operation Desert Shield is, to a great extent, providing a living laboratory in which we are testing the Total Force Policy, because Active and Reserve forces are already working side by side, and very successfully, to carry out the missions which have been assigned by the President.

I am very pleased to report that the selective call-up of the Reserve units, which you referred to, and of the individual reservists which have been called, is proceeding in a very orderly and a very expeditious fashion. As you know, the President's call-up of reservists was the first call-up that has been executed under the provisions of title 10, section 673b, of the U.S. Code. The success that we are seeing today, I think, is the result of several factors, not the least of which is the first-rate planning and preparation by dedicated military leaders and the substantial resources which have been invested in the Reserve forces by the American people.

I, personally, have been very encouraged by the reports I am receiving daily of the willingness of National Guardsmen and Reservists, and their families, to leave their civilian work places to make personal sacrifices for the benefit of our Nation. I am very pleased to report that the current Family Support Program in each of the military departments seems to be working very well. We are learning from our mistakes, and I can assure the Congress that there is a pervasive spirit of cooperation within those Reserve units which have been activated.

As Mr. Jehn noted, the Soldiers' and Sailors' Civil Relief Act has served members of the Armed Forces very well over the years, but there are a couple of areas I would like to focus on and commend to the Congress' attention.

The first area that I would draw particular attention to has to do with professional liability protection for certain reservists who are called to Active duty. Various developments within the malpractice liability insurance industry in recent years have resulted in steeply increased premiums and a strong shift towards "claims made" insurance policies. For the Reserve physician, for example, this can result in a requirement to pay substantial malpractice liability insurance premiums after being called to Active duty. In some medical specialties, the malpractice premium charges during an individual reservist's period of Active duty may actually exceed the military pay and allowances which he or she receives.

The Department of Defense has been concerned with this issue for some time because we see it as potentially affecting our efforts to improve medical readiness, which is a very high priority. We are currently preparing proposed legislation to address this particular concern.

Another area of concern involves the reemployment rights of reservists. Over 80 percent of the enlisted members of the Selected Reserve, which are of course, the ones the President has called, and nearly 90 percent of the officers, are employed within the civilian sector. The statutory employment rights which are set out in the Veterans' Reemployment Rights Act provide a basic set of rights for those reservists with respect to both their current and their prospective employers and set a clear minimum standard for employer conduct with respect to them.

However, certain provisions of the Act require clarification, and we have been actively involved over the last several months with an interagency committee that includes the Departments of Labor, Justice and Veterans Affairs to develop what we believe will be a comprehensive legislative proposal to revise the Veterans' Reemployment Rights Act. The Department of Defense strongly supports this legislative proposal, and I can assure the Congress that it is being currently coordinated within the Administration.

The Veterans' Reemployment Rights Act and the Soldiers' and Sailors' Civil Relief Act provide important benefits that truly make a difference to our service men and women. We appreciate very much this opportunity to address these important statutes with you, and I can second Mr. Jehn's comments that we look forward to working with you on both of them.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, and we will get back to you.

Tony, before recognizing you, Arlen Specter has got to leave, and he would just make a comment.

It is nice to have you here.

OPENING STATEMENT OF HON. ARLEN SPECTER

Senator SPECTER. Thank you, Mr. Chairman.

This is my first occasion to be in this magnificent room. You can tell, because I don't know how to work the microphones over here. On our Senate side, they are always on. We talk a little too much, as Senator Cranston can confirm.

But I wanted to be here on this joint session to show my interest and concern on this very important subject. We are getting ready for Judge Souter's confirmation hearings, and I have to excuse myself, but I will study the transcript.

I would just make one comment. The Soldiers' and Sailors' Civil Relief Act is a very important legislative piece, and especially so at a time when we have the action in the Middle East.

On a very personal note, many years ago as a younger lawyer, I was representing a party in a case and I had a statute of limitations problem and, by chance, found that there was a provision in the Soldiers' and Sailors' Civil Relief Act of 1940 which tolled the statute of limitations. That was one item which was there, and there are many other very vital parts of this act. I am glad to see this committee take up this important piece of legislation, and I commend the chairman, Chairman Montgomery, and all those here for working hard to improve it, and I will participate in that.

I thank you, Mr. Chairman, for allowing me this moment to speak.

The CHAIRMAN. Thank you, Arlen, for coming over.

Tony Principi, who is the deputy secretary of our Veterans' Department—you have been a blessing down there, Tony. We have certainly enjoyed working with you.

One of the good appointments made by President Bush, Tony Principi.

STATEMENT OF HON. ANTHONY J. PRINCIPI, DEPUTY SECRETARY, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY D'WAYNE GRAY, CHIEF BENEFITS DIRECTOR

Mr. PRINCIPI. Thank you very much, Mr. Chairman, for those kinds words.

Chairman Montgomery, Chairman Cranston, members of both committees, it is certainly a pleasure to appear before you. You have my prepared statement, and I would very briefly like to highlight the VA's response to the current Middle East crisis and then to focus very briefly on the improvements we believe need to be made to the SSCRA if it is to remain a viable law.

Having served in both the operational components and the JAG corps components of the Navy during the Vietnam war, I learned then how important this law is to Active duty servicemembers and those who are called to Active duty, and now those who have been called up to Active duty need the full protection of this act.

As we observed the situation in the Middle East reach its critical stage, we began our own assessment of contingency plans associated with both health care and benefits delivery. In 1982, you gave us what has become known as our fourth mission, to be the primary backup to DOD in the event of military casualties, and we take that responsibility very seriously and have implemented our plan. We stand ready to serve as the primary contingency backup to the Department of Defense in an emergency, and weekly we receive reports from all of our hospitals regarding the number of beds that could be made available within 24 hours and 72 hours should casualties arise.

Likewise, the benefits delivery structure would be substantially impacted by combat operations. The specific relevance and impact on disability compensation, education programs, including vocational rehabilitation, loan guaranty, and insurance are being analyzed. Our public service and administrative responsibilities in areas of casualty assistance, aid to combat-injured patients, and overall information dissemination are fully understood and being implemented.

We recognize an important duty to support the Department of Defense and the Active forces with information and, where applicable, claims assistance during this period. Detailed information on potential benefits impact has been dispatched through our Veterans Services Program, Loan Guaranty Program, and program participants throughout the regional office system.

We recognize that the primary responsibility for notifying servicemembers of the protections of the SSCRA falls on the Department of Defense. However, in a specific sense the act involves VA in the areas of loan guaranty and insurance.

Specifically, Mr. Chairman, we believe improvements are needed in the SSCRA. We concur in each of the recommendations by the Department of Defense for updating the act and improving its protections for Active duty servicemembers, members of the Guard and the Reserves. Specifically, we agree that letters from a servicemember or his or her attorney to a court invoking the act's protection should not be considered appearances which would prejudice the member in a legal action.

The act should specify that interest obligations exceeding 6 percent are not simply deferred but become unenforceable and that credit protection should be extended to members who benefit from this limitation. The 6 percent was put in the law at a different time, when interest rates were far different than today, but from a personal perspective, I hope that the 6 percent would stay in effect for those who have been called up to Active duty.

The current $150 ceiling on protected home leases in place since 1966 is wholly inadequate today for Active duty servicemembers and members of the Guard and Reserve, and there should be automatic adjustments to whatever updated figure is agreed upon. We might add that the current 90-day post-service period covered by this protection should perhaps be increased to 180 days to facilitate the length of time it may take some veterans to become fully employed once they return to civilian life.

DOD's malpractice insurance proposal and tuition reimbursement ideas make eminent good sense. We also believe that many questions have arisen concerning the 6 percent limit on obligations. The Congress might consider whether enforcement authority should be granted to the Federal Reserve Board or some other administrative agency to issue regulations and resolve disputes between parties.

While the redemption rights protections may be of benefit to members, the cloud they put on titles to the property covered could create considerable uncertainty. It may be that these rights should end with the period of obligated service to which a member is called rather than with the entire period of Active duty one serves.

With regard to insurance, which is a key component of the SSCRA that falls upon the VA, I would like to point out that the current $10 thousand policy limit in place since 1942 on commercial life insurance policies should be increased to at least $120,000 to reflect realities of modern day private coverage. We also see no point in excluding group policy coverage. We are also looking at the SGLI, which is currently at $50,000, to make a determination whether SGLI should be increased as well.

Mr. Chairman, this concludes my testimony. I appreciate the opportunity.

[The prepared statement of Mr. Principi appears on p. 87.]

The CHAIRMAN. We are glad to have you, General Gray. I think Mr. Principi was going to cover for both of you, unless you had anything——

Mr. GRAY. I can serve best by being quiet, Mr. Chairman. Thank you.

The CHAIRMAN. You are learning fast. Coming out of the Marine Corps, you are really doing well. Thank you, sir.

Tom Collins, we are glad to have you, assistant secretary for veterans employment and training, Department of Labor.

STATEMENT OF HON. THOMAS E. COLLINS, ASSISTANT SECRETARY FOR VETERANS EMPLOYMENT AND TRAINING, DEPARTMENT OF LABOR

Mr. COLLINS. Thank you, Mr. Chairman, for the opportunity to be here, and, Chairman Cranston and I certainly appreciate and share the joint committee's timely interest in veterans' reemployment rights programs.

As you are well aware, Operation Desert Shield has heightened the American public's awareness of this program's importance in support of the Total Force concept now being put to test in the Middle East. The President's mobilization of Reserve components, which is unprecedented since the Vietnam era, has produced a flood of inquiries from reservists and their dependents, employers, and the media. I am proud to say that the Department of Labor, my Office of the Veterans' Employment and Training Service, tremendously assisted by our Solicitor's Office and our Office of Public Affairs, have responded very well to the unusual demands generated by the military response to Iraq's aggression in the Persian Gulf.

Since the call-up of Reserve forces on August 22 of this year, we have responded to approximately 3,500 inquiries nationwide. The inquiries range from basic questions about reemployment rights that are protected to very specific questions about such things as health insurance coverage for dependents while the reservist is on duty.

We have worked closely with the Department of Defense, Office of Reserve Affairs, including the National Committee for Employer Support for the Guard and Reserve, and the Department of Labor's solicitors to develop public information materials containing accurate responses to technical questions regarding benefits and coverages and to disseminate this information.

We have issued a news release nationally, a field memorandum, and had a lengthy technical article published by the Commerce Clearinghouse Human Resources Management Service, a publication that reaches thousands of personnel administrators. I have personally given interviews to television, radio, wire service, individual newspaper media, as has my field staff around the country in the Veterans' Employment and Training Service .

I am especially proud of the reaction of our Nation's employers, both private and public, to the current Active duty of our Reserve forces. Many private sector employers are giving voluntary compensation and health care benefits to their employees called to Active duty in the forms of such things as differential pay and voluntary continuation on company health care insurance plans.

There is a much improved understanding and spirit of cooperation with public employers. The Office of Personnel Management is taking initiatives in interpreting and communicating reserve member employment rights to the Federal agencies, and we are making every effort to achieve this same spirit of cooperation with State and local government employers.

A great variety of businesses and government agencies are impacted, and I am happy that most are understanding legally required reemployment rights and many are going far beyond the minimum requirements.

As you already know, the reemployment rights statute is complex. It came into being as one of the features of the Selective Training and Service Act of 1940 and has been amended several times to extend reemployment rights to enlistees and inductees and to reservists returning from basic training duty.

There have been hundreds of Federal case decisions, including several Supreme Court decisions, on reemployment right cases in the 50-year life span of the law, and thus each new complaint or inquiry received must be considered not only in light of chapter 43 of title 38, United States Code, but in light of the interpretations of the Code that have been made by these many court decisions.

The Veterans' Employment and Training Service, which has been responsible for this program since 1983, has provided training at our National Veterans' Training Institute to all of our field staff to ensure that everyone who might receive an inquiry regarding the program is trained to respond according to the procedures set forth in the agency's recently published operations manual.

Several months ago, I implemented a reorganization in my national office that reestablished a distinct division of veterans' reemployment rights to ensure that the program maintains a visibility commensurate with the importance in our Nation's security. I want to ensure that we continue to improve the productivity of the program for our clients.

We stress to the agency's field staff the importance of mediation and conciliation approaches to resolving cases as soon as possible, and we have been achieving success. In 1989, we resolved over 1,400 cases, 96 percent of them without having to resort to litigation with the Department of Justice. We are also continuing to improve our case processing time. In 1987, it took an average of 126 days to process a case. By continually placing higher expectations on our field staff, continuing our emphasis on in-service training, and involving more of the staff in resolution activities, we have brought the processing time to 42 days for cases opened in fiscal year 1990. We have maintained quality standards by continuous in-service quality reviews at all regional offices.

While I think we have reasons to be proud of our accomplishments, I am concerned about the future. The volume of inquiries I mentioned earlier concerning the Reserve call-up clearly indicates there is a vast gulf of ignorance and misunderstanding within our country about reemployment rights of veterans, reservists and Guard members. Furthermore, the complexity of the current statute makes it difficult to answer simply what may appear to be a simple question.

While we will continue to work closely with the Department of Defense and through the media to disseminate fact sheets and other public information materials, it is questionable how effective we will be in preventing inquiries from becoming complaints due to the complexity of explaining the current statute.

It may also be that we are approaching a point where we cannot achieve further improvements in productivity without sacrificing quality, because the ability to settle cases quickly is related to the degree of difficulty in getting both the employer and the reservist to understand what the law requires.

Because of my concerns, I followed through on efforts begun three years ago by interagency task force that has made recommendations for clarifying and simplifying the existing law and streamlining the administrative process for resolving cases. We are working on a legislative proposal addressing those task force recommendations. The proposed legislation would make the statute more understandable as it would describe specific responsibilities of employers instead of using broad language subject to differing court interpretations.

Also, we would have the authority to issue regulations and thereby clarify provisions of the law through the public rule-making process. It would eliminate the current confusing distinctions among categories of military training or service, and under our bill entitlements and eligibility would depend simply upon the duration of service. It would clarify provisions for Federal employees by giving the Merit Systems Protection Board explicit authority to adjudicate Federal worker claims.

All in all, I think we are developing a bill that is good for our military men and women, good for the public and private sector employers, and will be good for those of us in the executive branch who must provide these services. You may expect us to continue our emphasis and coordination with cooperation among the agencies on the dissemination of information and timely resolution of complaints.

Thank you again for the opportunity to discuss our reemployment rights program with you, and I would be happy to answer any questions on these matters.

[The prepared statement of Mr. Collins appears on p. 95.]

The CHAIRMAN. Thank you very much.

Mike Parker.

Mr. PARKER. Thank you, Mr. Chairman.

For the information of the committee, the last gentleman who testified, Mr. Tom Collins, I think he probably personally understands the sacrifices that military personnel have made in this Nation more so than anyone else, because Tom served in Vietnam and was a prisoner of war for seven and a half years in Vietnam.

Tom is from my district; he ran for Congress two years ago.

I want to tell you, Tom, I'm glad you didn't win—because Tom and I ran against each other. But we do appreciate your sacrifice and understand just how much you know about what people go through, and we are very proud of you in Mississippi.

Thank you, Mr. Chairman.

Mr. **Collins**. Thank you, Mike.

The **Chairman**. What Mike Parker said was, he hopes you like your job up here and you stay up here and don't come back running for Congress.

[Laughter.]

The **Chairman**. Alan Cranston.

Senator **Cranston**. The Soldiers' and Sailors' Act provides certain protections for servicemembers and their dependents against the eviction from a home or apartment for which the rent is not more than $150 a month. The Congressional Research Service has estimated that this figure of $150, last revised in March of 1966, would have a value of $504 in July 1990 dollars, using the residential rent component of the Consumer Price Index, or $609, using the overall CPI. Even these adjusted numbers seem unrealistically low, considering what a family of three or four must pay for a modest rented home—especially in high cost areas such as my own State of California, which has a large number of the Nation's military and Reserve members.

So, Chris and Steve, I would like to ask, what role does the dollar limit have, and what should we do about it?

Mr. **Jehn**. We are looking at increasing that. In fact, as you have noted, that $510 figure that the Congressional Research Service came up with is based on simply inflating the $150 and implicitly assumes that the $150 was correct.

We would prefer to go back and take a zero-based look at what the number should be, base it on our housing information that goes into our determination of the sum of the BAQ and VHA. We get a number that is a lot closer to about $750.

Senator **Cranston**. About what?

Mr. **Jehn**. About $750, and so, as I said in my opening remarks, what we are going to try to do is put together a proposal that will both increase the $150 to something that is more reasonable today and include an adjustment mechanism so that it automatically increases from here on out to maintain parity with today's rental markets.

Senator **Cranston**. How soon do you think you can get us a firm estimate figure?

Mr. **Jehn**. We have our legislative proposals circulating within the Department right now. It is a matter of our working those through the Department and throughout the Administration. So, we are hopeful in a matter of just a few weeks we will up those figures.

Senator **Cranston**. Would it make sense perhaps to just eliminate the dollar limit and set some starting figure now and have some indexing?

Mr. **Jehn**. Well, the figure we would start with is that $750, as I said, and then use some adjustment mechanism to go forward from there, yes, sir.

Senator **Cranston**. What role does the dollar limit have?

Mr. **Jehn**. In effect, it says the eviction protections of the act are not available to individuals whose rent is greater than that dollar limit. So the effect of it, as far as I am concerned, is to pretty much nullify that section of the law for those whose rent is greater.

Senator **Cranston**. Let me describe a situation that I learned of recently that involved somebody who has been working around the Congress. A reservist currently is trying to sell his house. He has not been called to Active duty or even alerted yet. However, to be safe, he requested that his real estate agent include in any sales contract for the house a clause giving him a right to rescind the contract if he were called up before being able to purchase a replacement home or if lenders refused to give him a mortgage for a replacement home.

His agent reported that many lenders are not sure whether they legally may discriminate against reservists but are looking very hard for any other reason to deny loans to members of the Reserve, apparently. The agent told the reservist that a clause like the one he requested would make his house unmarketable, and it is understandable how that would create difficulties.

The company for whom the agent works refused to advertise the reservist's home because of what the broker called the uncertainty of the reservist's ability to complete a deal if called to duty. In fact, the broker told the reservist that the broker felt a legal duty to disclose to any prospective buyer that the seller is a member of the Reserves.

It is very easy to imagine a lender reviewing a loan applicant's financial statement and noticing income from the applicant's Reserve duty and looking for any pretext whatever then to deny the application. Indeed, it is possible that no pretext is necessary and that a lender might be able to deny a loan just because the applicant is a reservist.

So I would like to ask this. Steve, do you know of any similar instances of discrimination in lending, housing, insurance, or any other area on the basis of Reserve status?

Mr. **Duncan**. I have not been informed of any broad-based discrimination merely because of Reserve status, but, of course, one of the concerns we would have about that kind of factual situation is that under the Total Force Policy, this particular reservist might not be called in connection with Operation Desert Shield, but Reserve units and National Guard units might be called for some other contingency.

So that form of broad-based discrimination would be unacceptable, because we can never tell which reservist or which Guardsman might be called at any particular time.

Senator **Cranston**. Do you believe we should endeavor to write some kind of statute that would prohibit discrimination of that sort?

Mr. **Duncan**. As I say, I have not been informed that that is a broad-based policy, but perhaps we need to explore and find out just how big of a problem it is. It has not been brought to my attention. The situation you describe may be nothing other than an isolated incident, but perhaps we better do some exploratory work, and we will be happy to do that.

Senator **Cranston**. I would appreciate it if you would.

Mr. **Duncan**. Yes, sir.

Senator CRANSTON. Tom, I would like to direct a question to you. Could you describe briefly whether section 2021(b)(3) of title 38, which prohibits discrimination against reservists in hiring and other employment contexts by Government and private employers, seems to be working and what steps the Department of Labor is trying to take to make sure that employers follow the law.

Mr. COLLINS. Senator Cranston, the Code seems to be working. The problem is communication to employers, to make sure that they understand the basic reemployment rights of veterans and the need to not discriminate.

We do not have an overwhelming number of discrimination complaints. Of course, once a discrimination is alleged, that is the most difficult kind of case to process, resolve, and settle.

We are not advocating any specific change to the current code that would redescribe discrimination in employment of the reservist. I am concerned, I might add, personally, about the long-range implications of the current call-up. There is, I fear, going to be a very subconscious mood among employers, both private and public, that we must consider in the future to achieve the Total Force concept. I feel that it is inevitable, although it will not be specific cases of discrimination or adoption of employment policies that would discriminate against Guardsmen and reservists and returning veterans, but the mind set will be, "I have got to be concerned about this reservist, or this guy that might be in the reserve, and the long-range employment situation here."

That is what we are faced with. The solution is education, training, information, that you cannot discriminate.

Senator CRANSTON. Thank you very, very much.

The CHAIRMAN. Thank you, Alan.

After questions of this panel, the Chair will recognize Ben Gilman for a statement. He was here earlier, and I think Chairman Wylie has to leave and wanted to make a brief comment.

Mr. WYLIE. Yes, I do. Thank you very much, Mr. Chairman.

I want to congratulate you and Chairman Cranston for holding this very important hearing this morning on the implications of the Soldiers' and Sailors' Civil Relief Act and the veterans' employment rights. These laws are designed, of course, to protect military reservists from some of their financial obligations when they are called to Active duty and are facing income levels below what they receive in their civilian jobs.

I know that we want to hear from the witnesses clarifications in these regards, and I will read the testimony that has been given so far.

I wanted to ask Mr. Collins, if it is all right with the chairman—and maybe this question has already been asked, and, if it has, you can say, "I have answered it, and you can read the record." Should we attempt to address legislatively any reduction in pay when a reservist is called up?

Mr. COLLINS. To clarify the question, please, a reduction of the civilian pay that was being earned or reduction of the military pay, Active duty pay, that the member would be entitled to?

Mr. WYLIE. Reduction in civilian pay.

Mr. COLLINS. Generally speaking, the reservist, when called to Active duty, after having exhausted—and this is a complicated subject—except his earned leave and other time entitlements, is essentially on leave without pay.

Many employers have voluntarily given differential pay. In other words, they have made up the difference between what the reservist would make on Active duty and what his pay would have been had he been retaining his civilian employment.

But, legally, he is on leave of absence, leave without pay, and it would be a voluntary effort of the employer to make up the differential pay and other benefits that might be offered by an employer.

As I mentioned in my statement, many employers are doing this for the benefit of their valued employees and also those people who are now serving their Nation on Active duty. So we commend that, we encourage that, but to legislatively require that is not in the proposal.

Mr. **Wylie**. Did you say it was already provided for in the law? I didn't catch that.

Mr. **Collins**. It is not provided for in the law to make up the differential pay.

Mr. **Wylie**. Could I ask just one more question. This is one that relates to my position on the House Banking Committee, and it has come from financial institutions. It has been suggested that the act gives an unfair advantage to persons called to Active duty in that it would permit an individual to receive advances on a pre-arranged line of credit, such as one secured by a second mortgage, and then demand that the interest rate be reduced to 6 percent. Is that what the act provides? Maybe you are not the right one to ask that question of, Mr. Collins, but I would be glad to have anybody attempt to help me answer it.

Mr. **Principi**. Certainly it protects the servicemember who incurs an obligation prior to being called up to Active duty, and then once on Active duty it puts a cap on the interest rate to 6 percent. That is correct. It is not clear whether the 6-percent cap applies to advances made after the servicemember entered Active duty on a line of credit obtained prior to service.

Mr. **Wylie**. Okay. Thank you.

Thank you very much, Mr. Chairman.

The **Chairman**. Thank you.

What the Chair would do is recognize members who hold up their hands, maybe not go down the list, but I would recognize you in the matter of rank in the way you came in.

The only thing I would say is, if this panel would, in the next couple of weeks, make some recommendations both to the Senate Veterans' Affairs Committee and our committee of what changes need to be made, it would be very, very helpful, and speed it up, if you can. We are not looking for a lot of work, but we need to make some of these corrections, if we could hear from you, and they are necessary. So it would be very helpful if you could get us that information.

The Chair would recognize any member. I think Mr. Applegate had a question.

Mr. **Applegate**. Thank you, Mr. Chairman. I, too, want to congratulate you and Senator Cranston for cochairing this, bringing this to the forefront.

The purpose of the bill, of course, is to protect any of our Reservists, National Guard, or active militarists from potential economic hardship, and it seems to me that no defender of America should in any way have this as a burden to contend with. I think we all agree with that. Therefore, the act is good; its purpose for being, I think, has been well used; but I agree with the chairman that there are revisions that need to be made; and I think that over the coming weeks, with your input, and your assistance, that we will be able to bring this up to date, up to modern times, and with the situation that we are facing.

I wanted to ask this. I understand that there is a toll-free number that people can call to ask questions about the act.

Mr. **Duncan**. Yes, sir. Through the National Committee for Employer Support of the Guard and Reserve, which is an agency of my office, we have a 24-hour, toll-free number. Many of the calls we receive are, in fact, from employers, as well as employees, just asking what their obligations are under the law.

Mr. **Applegate**. It is being pretty well widely used then?

Mr. **Duncan**. Yes, sir.

Mr. **Applegate**. What is the number?

Mr. **Duncan**. I think I have it right here. Well, I didn't bring it with me, but I can get it to the Chair immediately.

We have gone on television, been in the media, we have given it in interviews, we have publicized it as best we can. I just didn't happen to bring it with me this morning. Perhaps one of my staff has it here.

By the way, I might make an additional response to the question. The telephone number appears in a new publication that just came out which includes a letter signed by Secretary Cheney: "Ordered to Active duty. What now? A guide for Reserve component families." This publication has just been put together by the Office of the Secretary of Defense. It includes this information plus many others.

Bear with me 1 minute, and I will give you the telephone number: 1-800-336-4590, and the Washington, D.C. telephone number is 202-653-0860.

Mr. **Applegate**. Let me ask you this, what kind of questions are generally being asked now?

Mr. **Duncan**. Soon after the invasion occurred and even before the presidential call-up, we started putting into effect increased telephone banks to respond to various kinds of questions. So, in addition to the 800 number, which is a 24-hour number, we put additional staff personnel and telephone banks on to handle various kinds of incoming calls.

There were a great number of calls, as you might suspect, soon after the President authorized the call-up of members of the Selected Reserve. The trend has started to go down in recent days.

The calls have been from a wide range of people. Many times, they are from families of reservists. More often than not, they are from employers who ask: "What is the extent of my legal obligations? What am I required to do by the law?" And in many cases, the questions are from individual reservists who ask: "What are my rights, given this factual circumstance?" We try to give them full answers. If the questions are very detailed, very complicated, and Mr. Collins has indicated that many of the questions are, then we don't hesitate to make sure that they are in contact with the Department or agency that can best provide the detailed information as necessary.

Mr. **Jehn**. If I may, sir, I would like to just note that a lot of what Mr. Duncan just talked about doesn't just apply to reservists but applies as well to our Active duty members. Our family assistance centers at military bases have beefed up their staffing and are also accepting phone calls and providing legal assistance and other kinds of counseling to servicemembers, and their families, during this deployment.

Mr. **Applegate**. Okay.

Tony, your veterans' benefit counselors, are they prepared to accept calls?

Mr. **Principi**. Yes, indeed, Mr. Applegate, they certainly are, and we have received numerous calls from reservists, Active duty personnel, families, and we have had contacts, of course, with the mortgage lenders, the mortgage lending industry. The inquiries have covered the waterfront. We have received a substantial number of calls with regard to employment and reemployment rights which we have deferred to the Department of Labor.

So yes, we have advised our veterans' benefits counselors, and we are prepared to assist in any way we can.

Mr. **Applegate**. You had mentioned the SGLI and that you had looked at the possibility of increasing that. Do you have any kind of a recommendation that we could consider?

Mr. **Principi**. Not yet, Mr. Applegate, but we will certainly, working with the Department of Defense, get back to you as soon as we can with regard to SGLI and whether that coverage should be increased. As you know, a few years ago it was increased from $35,000 to $50,000, and we are looking at it now as a response to this situation in the Middle East.

Mr. **Applegate**. Well, let me just ask this. Do you believe changes are warranted in the provisions of the act affecting the guarantee of the insurance premiums?

Mr. **Principi**. Yes, we do. We believe certainly that the coverage should be increased from $10,000 for commercial insurance policies to $120,000. At the time that the SSCRA was enacted into law, the average life insurance policy was about $5,000. Clearly, $10,000 is not appropriate, given the current economic realities.

So yes, that should be increased, as well as coverage should be extended to group life insurance policies; the act does not today cover group life insurance policies.

Mr. **Applegate**. Okay. Thank you.

The **Chairman**. Chris Smith.

Mr. **Smith of New Jersey**. Thank you, Mr. Chairman.

Mr. Collins, you point out that many private employers are continuing health care and insurance plans. I wonder if you might tell the committee, how many are we talking about? Are there any legal obligations whatsoever for those employers to provide health care insurance premiums and to continue paying their end of it? And how does that apply to the local, State, and Federal Governments?

Mr. COLLINS. I have no statistics on how many employers are doing this. I can give you later a few success stories. They are not required to continue insurance plans. However, I need to point out that, just like the reservists and returning veteran, he is entitled, under the right conditions, to his job back as if he never left. He is also entitled to reenter the benefit plans. During the absence, though, we recommend that it be done on a voluntary basis.

Statistically, I do not know a percentage of how many jobs and how many employers in the country are actually doing that. I will work on that, and as information develops I will let you know.

The latter part of your question concerning the requirement to continue inclusion on the benefit plans is not under consideration right now, because the reservist, the member absent, is actually on a leave of absence and actually in another job guaranteed the right to come back. That is the very premise of the protection.

Mr. SMITH OF NEW JERSEY. Mr. Chairman, I would like to pursue this and perhaps look at a legislative proposal.

We recently passed legislation to provide for unpaid leave and to guarantee the right of a person to come back after a 10-week hiatus for pregnancy or for some debilitating disease for a spouse or family member. One of the aspects of that legislation provided for insurance coverage to be borne by the employer for that employee.

It seems to me that when our reservists are being called upon to make a rather significant sacrifice in the defense of this country and of our vital interests that we should at least explore a legislative idea to extend that benefit and require it of our employers for our Reservists and National Guardsmen. I would like to look into that, Mr. Chairman, and follow up on that as we work through some legislation.

Mr. Jehn, could you tell us what specific individual legal assistance is being offered by the military services or what is being contemplated for called up reservists in obtaining relief under the Soldiers' and Sailors' Civil Relief Act? For example, are they being offered help in notifying creditors and obtaining stays of legal actions?

Mr. JEHN. Yes. The legal assistance attorneys within each of the services provide exactly that kind of help. There are attorneys in Saudi Arabia with our forces, as well as, of course, attorneys available at the bases where people first report upon being ordered to report.

Mr. SMITH OF NEW JERSEY. Mr. Duncan, you alerted the committee to the problem of physicians; I think you said roughly half who have been called up, must pay malpractice insurance premiums for private practice coverage while on Active duty, and the rates are so high you suggested they exceed the physician's military pay. Could you elaborate on that problem? Address some of the solutions that are being contemplated in that area. Can it be done administratively in terms of a fix? As I think all of us know, absent a lame duck session, there are very few legislative days left in the 101st Congress.

Mr. DUNCAN. Sir, we have already completed a first draft of a proposed piece of legislation to address the problem. The practical problem is, simply presented, for a professional, whether it is a physician or any other kind of professional, who has malpractice liability insurance, the premiums are exceedingly high, given today's economic realities. The reservists are called to Active duty; their pay may go down, but, their insurance policy may not be extended by the firm they were with or the hospital they were with. The policy may not cover them while they are on Active duty. So the question is, should they be forced to pay rather large premiums while they are being called, perhaps involuntarily, to Active duty? We say no. We say they should not receive any windfall, but we certainly believe they should not be penalized for serving in the Armed Forces when their Nation needs them.

So, what we are doing is trying to draft legislation, the general purpose of which would be to freeze the status quo, so that it would not work to the detriment of any potential alleged victims of malpractice but, at the same time, would not work a detriment to the individual reservist who is called to Active duty. We will have some proposals over here as soon as we can, and we have been working very hard on them.

Mr. SMITH OF NEW JERSEY. Yes, but malpractice is asserted by a victim. It would obviously have to happen before the physician was called to Active duty. So, hopefully, that time of coverage would apply.

Mr. DUNCAN. Well, generally, there is a difference here. In the "claims made" policy area, a claim might be made in the absence of legislation. A claim might be made after the physician or professional is called to Active duty even for an alleged incident of malpractice that took place some time before. The claim might be made while he is serving as a reservist, and his policy would not cover him.

So, what we are trying to do perhaps is to permit the following—the general theme might be something along these lines: permit the filing of a claim, but abate the case so that the alleged victim is protected and so we don't penalize the professional economically while he is serving in the Armed Forces.

Mr. SMITH OF NEW JERSEY. Understood.

One final question. Mr. Jehn, does the Department of Defense have any recommendations regarding a situation such as this: A small construction contractor whose personal presence is essential to the work is a reservist and is called up. He has a contract which he is now unable to perform. He has a license which may be in jeopardy and faces default on a performance bond. We have been advised, and staff has been advised, that this is actually happening in the field.

In that answer, if you could, touch on how "materially affected" is defined in the statute.

Mr. JEHN. Let me deal with your second question first: How is "materially affected" defined? My understanding is—and I am not an attorney—I believe it is not clearly defined.

As far as the first question you referred to, that of the contractor who might be adversely affected by being called to Active duty, again, I am not aware of problems in this area, but our attorneys at the Department have begun looking into all these cases. Perhaps somebody else on the panel knows more than I do about that case. But certainly what we expect to do is to make sure situations of this kind do not adversely affect the Reserve member being called to Active duty, and we will, where necessary, propose legislative cures or take administrative action if that is available to us as well.

Mr. **Smith of New Jersey**. Thank you, Mr. Chairman.

The **Chairman**. Tim Penny.

Mr. **Penny**. If I might follow up on that, could you give me some examples of what action you would suggest in a case like this? Would it possibly involve allowing that reservist to complete the contract before being called up? I mean, how else do you remedy a problem where they might be not only losing a major contract but jeopardizing a license?

Mr. **Jehn**. I guess my first response would be, if an individual is in a position where he expects being called to Active duty would materially affect his ability to perform his duties in civilian life, he probably shouldn't be in the Reserves in the first place. We ask a lot of individuals who serve in the Reserves. This is no longer a situation like we had 20 or 30 years ago, where the Reserves were not an integral part of our national defense posture. They are part of the Total Force today. Individuals in the Reserves must be prepared to leave their civilian lives at more or less a moment's notice and accept the responsibility of serving in the military when called.

Mr. **Penny**. But certainly someone with this expertise would be important to the military in almost any operation, because those are talents that are critical in a war zone.

I was intrigued by Mr. Smith's question that this could put someone who is important to the military in a position where they might be risking their civilian career upon their return to the private sector.

Mr. **Jehn**. Again, as I said, I am not aware of the extent to which this is either a common problem or an extensive one. Certainly our staff—Mr. Duncan's staff and mine—have been looking at provisions of the act for situations of this sort to make sure that things that would seem reasonable to all of us don't adversely affect the civilian careers of military members.

Mr. **Penny**. The other response you gave earlier on abating claims brought during the time of military service, how would that work? Upon their return to civilian employment, they would then have to reestablish a policy, and then that policy would again cover them?

Mr. **Jehn**. I was referring to the malpractice insurance claims.

Mr. **Penny**. Now I am back to malpractice.

Mr. **Jehn**. We are still working on the idea, but it goes generally along the lines that we don't want anyone to be injured by the call to Active duty, whether it is a potential victim or the reservist against whom some kind of a liability claim has been asserted.

So, the general theory would be to try to freeze things in place so that no statutes of limitation would run, claims could be asserted and prosecuted after the reservist came off of Active duty and returned to civilian life.

But going back to the previous comment, you know, we find an awful lot of critical skills, very important skills, in the civilian community that we would like to see in the Armed Forces, and we are committed to finding ways to eliminate obstacles so people who bring those kinds of skills to their civilian service could bring them to the Armed Forces. So, we are willing to work with the Congress to do whatever we can to break down obstacles, not to impose obstacles.

Mr. **Penny**. I hope that you can come up with some suggestions in the two areas raised by Mr. Smith. This malpractice area, I guess you can come at it from either side, either abate the claims and then have them pick up a policy upon leaving the service, although that could jeopardize the availability of policies or the price of policies if they know there is a claim that has been filed, or we could extend to them, just because of their reservist duty, the right to have a malpractice policy that will extend through their tour of duty.

Mr. **Jehn**. We have no monopoly on good ideas, but I will tell you, because I have talked to an awful lot of physicians, the magnitude of the premiums for the malpractice liability policies can impose a very real obstacle to service in the Reserve forces. If there is no solution to the problem, they could just be hanging out there without protection, and we don't want that at all; we want to eliminate that problem as fast as we can.

Mr. **Penny**. In your testimony, you mentioned that a court had ruled that the $150 rental limit in terms of the eviction right should be adjusted to $340. Is that just in one jurisdiction, or have you applied that principle of $340——

Mr. **Jehn**. We haven't applied it anywhere. That was just an example of how a lot of people recognize that $150 is not realistic.

Mr. **Penny**. I appreciate your interest in helping us to establish a more realistic and current rental figure.

As we look at the benefits under the Soldiers' and Sailors' Civil Relief Act, am I correct in my understanding that all of these benefits have to be applied for and some kind of financial need has to be determined in order to secure the lower interest rates and the other protections?

Mr. **Principi**. Primarily, Mr. Penny, in the loan obligation area that is indeed the case. The servicemember has to apply to the courts for the protection except in the case of the 6-percent interest ceiling.

Mr. **Penny**. And there has to be a demonstration to a civil judge that those reductions in interest rates are warranted.

Mr. **Principi**. Except for the 6-percent interest level, there has to be a material impact shown, that the Active duty materially impacts on the servicemember's ability to repay the obligation. The lender, the creditor, can apply to the court for an increase above that 6-percent cap, and the court can rule.

Mr. **Penny**. So in all of these cases the court acts as a mediator and tries to award a fair settlement, taking into account the financial position of the service person and the concerns of the creditor.

Mr. **Principi**. That is correct.

It should be noted that neither the VA nor any Federal agency—the Department of Defense, no one—has the authority to interpret the law or to enforce the law. That is left up to the courts, and the servicemember is really at the mercy of the court to be treated fairly.

Mr. PENNY. Mr. Chairman, if I might, since I chair the Education, Training and Employment Subcommittee, I just want to conclude with a remark for the benefit of Mr. Collins.

I know that for some time you have been working on recommendations regarding updating the veterans' reemployment rights laws, and here we are in a crisis situation and we don't have that legislation before us. I know that due to this current development you are more interested than ever in finalizing those recommendations, and we look forward to hearing from you. But it is really too bad that, for bureaucratic purposes or whatever, this thing has been dragging along for, in fact, a number of years and we didn't have the new legislation in place prior to this Middle East crisis.

The CHAIRMAN. Thank you.

I will now recognize Mr. Bilirakis, but first let me make two comments. This big monetary system now involves credit cards, and I assume credit cards would come under this relief act. Is that correct?

Mr. JEHN. That is our assumption.

The CHAIRMAN. And the other thing, Secretary Jehn, you mentioned the Total Force, and, you know, that turns me on. We all agree that the Total Force is what we need, where you have National Guards and Reservists training right next to the Active forces. But the problem we are having with the Defense Department is, they are only calling up—and you have heard me say this over and over again; my colleagues are laughing—calling up support units. If you are going to make the Total Force work, you are going to have to call up combat units, and that is what Congress wants you to do. So I want to say it over and over again. If you are going to have the Total Force, you have to call up combat National Guard and Reserve units, and you are not doing it.

Mr. JEHN. Yes, sir, we understand your position.

The CHAIRMAN. Well, I just mentioned it to you an hour and a half ago, and I will do it again.

Mr. JEHN. Yes, sir.

The CHAIRMAN. Mr. Bilirakis.

Mr. BILIRAKIS. Mr. Chairman, should you get a response as to why they are not calling up combat units?

The CHAIRMAN. I have tried.

Mr. BILIRAKIS. You have tried. I personally am very curious about that, too. Are they just not prepared?

The CHAIRMAN. This is the best time to test the Total Force system. Thank God, nobody is coming back in body bags. Let's see if you can even mobilize them, how long would it take them to get there. I am talking about big combat units, infantry brigades; I am talking about A-10's, F-15, F-16 Guard and Air Reserve units. They are just not calling them up; they are calling up support units.

Mr. BILIRAKIS. Is it just possible that we are trying to sort of cover up the fact that they are just not ready to be mobilized and will not be able to function on Active duty?

Mr. DUNCAN. Mr. Chairman, at the fear of injecting myself into something that is really an operational matter, we can't simply let the matter go on too long. Mr. Jehn and I, as policy makers and policy advisors to the Secretary of Defense, certainly are aware of the Congressman's concern on this question.

Let me assure the Congress, however—and I think as recently as Secretary Chèney's testimony yesterday, along with that of the Chairman of the Joint Chiefs of Staff—that the current policy remains an open question. I think it is accurate to state very forcefully that that use of combat forces from the National Guard and Reserve is still a very open question and no final decisions have been made by the Chairman and the Secretary of Defense on that issue. I believe they stated that yesterday in testimony to the Senate Armed Services Committee.

Mr. Wylie. If the gentleman would yield on that.

Mr. Bilirakis. Yes, sir, I will be glad to yield.

Mr. Wylie. Isn't it true that you have had a considerable number of volunteers from the Reservists and National Guard? I know that is true; there are a high number in the Air National Guard. They indicated to me when I visited Rickenbacker Air Force Base recently that they had more volunteers than they could handle that were going over there in combat missions.

Mr. Duncan. Yes, sir. We had very large numbers of volunteers in all of the Reserve components, but they were most conspicuous in the Air Reserve components even before the President authorized the call-up. Indeed, most of the strategic airlift missions were flown by National Guard and Air Force Reserve pilots and air crews, and the number of volunteers continues. Basically, what we looked for in the early stages of the crisis was how many volunteers were available.

It is no longer even surprising that we get thousands and thousands of volunteers from the Reserve forces to serve, but at some point certain skills that were necessary and which could be found in the Reserve units, and only in the Reserve components, required the call-up, and the President didn't hesitate to authorize it. So, we are operating on a day-by-day basis to see what the military needs of the field commanders are and responding as best as we can.

Mr. Wylie. I think that makes the point that it did reduce the need for a so-called call-up to a considerable degree, didn't it?

Mr. Duncan. I'm sorry, I missed the question.

Mr. Wylie. I think the point needs to be made that it did reduce the need for a call-up to a considerable degree.

Mr. Duncan. There has been no shortage of Reserve volunteers either for operation Desert Shield or in Panama with Operation Just Cause. As a matter of fact, one of the problems I deal with daily is that our forces are most anxious to be involved. What we have to look at, though, is the question of whether the skills of the volunteers match the skills that are needed by the field commander at that time. So, we are obviously dealing with that also.

The Chairman. The only problem with that—if the gentleman will yield—is that if you start calling that individual out of different Reserve or National Guard units, that breaks up the Total Force. You train as a unit and fight as a unit. We would not want that; at least I would not. I think that would be a mistake.

As I understand it, under the law, the President has to call out units, he cannot call out individuals, under the provision he is using now. Is that correct?

Mr. DUNCAN. Under title 10, section 673b, the current status of the law is that the President can call Selected Reserve units or individuals outside of units, but he cannot call individuals from within units.

Mr. BILIRAKIS. I haven't even gotten into my two quick questions yet, but this crisis might pass us by—hopefully, it will—relatively soon and we still would not have any knowledge as to how our combat reservists might really function if they were called to function, and that is, I guess, the chairman's point. I think it is a very good one.

I am just going to follow up very quickly on points that Congressmen Smith, and Wiley, and Penny made. Mr. Jehn, is it possible for reservists to be exempted from a call-up due to personal financial hardship?

Mr. JEHN. It is possible, but——

Mr. BILIRAKIS. It is possible?

Mr. JEHN. But we have discouraged it.

Mr. BILIRAKIS. I appreciate that. But it is possible?

Mr. JEHN. Oh, yes.

Mr. BILIRAKIS. Okay. I won't go into that any further.

Mr. Collins talked about the voluntary compensation of many private employers, the health care, et cetera, and you were asked a question by Mr. Wiley about whether or not we should mandate the type of compensation which would at least get a person back up to a certain level because of the loss of earnings in a case where an employer does not pay, and you indicated this was not your proposal.

I guess my question is, should the Congress consider mandating that sort of thing as far as compensation and as far as health care? Frankly, I am more concerned with the health care aspect than the rest of it as it involves the entire family, although compensation obviously does too. I would ask that question maybe of all of you very quickly here.

You know, we really press so many hardships upon particularly our small business community as it is, but we are talking about a different type of world here. We are talking about people who are pulled away from their families, making sacrifices, and that sort of thing. I just wonder, should we consider something like that, where we would mandate it?

Yes, Mr. Jehn.

Mr. JEHN. I think it is important to note that reservists called to Active duty, are entitled to all the same privileges that Active duty members are; and dependents as well are entitled to medical, commissary, exchange, and other morale, welfare, and recreation activities and facilities on the same basis as the dependents of Active duty members.

Mr. BILIRAKIS. That is true, sir. However, we are talking about a temporary type of a call-up, and they are not going to be moving into a base or even into the vicinity of a base in order to be able to take advantage of those things.

Mr. JEHN. That is right.

In the case of medical coverage, though, dependents are eligible for medical care at medical treatment facilities of the uniformed services, but if they are not near one—and, as you pointed out, many of them might not be—dependents are also eligible for medical insurance coverage provided by CHAMPUS.

Mr. **Bilirakis**. By CHAMPUS.

Mr. **Jehn**. Yes, sir.

Mr. **Bilirakis**. Okay.

You don't want to address the compensation issue?

Mr. **Jehn**. In the medical area, we feel that there is adequate coverage for dependents.

Mr. **Bilirakis**. I wonder how that would work in practice, but how about compensation? You don't care to address that?

Mr. **Jehn**. Well, in terms of making up for the difference between——

Mr. **Bilirakis**. At least to a certain point. I mean a person who makes $5,000 a month or something of that nature, we certainly can't be talking about bringing them up to that point, but at least up to a certain point.

Mr. **Jehn**. I think, as Mr. Duncan noted earlier, we are always concerned that the burden of service not become excessive to people, and we look for solutions and ways to encourage people to come on.

A very good case in point: Our medical professionals are making salaries that are vastly in excess of what they are going to earn when they come on Active duty. So, we are always looking—I think is the best way to put it—at solutions to these kinds of problems.

Mr. **Bilirakis**. What is the history? It is sort of a very short period of time, and we don't have that much history yet. But do we have much experience regarding, let's say, our medical personnel? Assuming now that they have partners and they are part of a firm, but many of them are not, they are sole practitioners. Are we finding that there is a continuation of their compensation by their firm when they have been pulled in?

Mr. **Duncan**. There is a wide range of personal experiences. I remember talking to a dentist with Operation Just Cause, in Panama, about that issue. He was in charge of administering health care for assisting the new Government of Panama and had huge responsibilities, and I said, "What kind of practice are you in? Are you with a bunch of other dentists?" and, as I recall, he was in a solo practice. So I said, "Well, what happens to your patients, and how do you handle this?" Basically, the answer—and I wouldn't presume to say that this covers all individual cases, but what I find an awful lot of is, the physicians and dentists and professionals like this say, "I've made arrangements." It is a sacrifice for them, but most go into it knowingly, usually for very strongly held patriotic reasons and, also because of the enjoyment they receive from serving in the Reserve forces.

Make no mistake about it, there are some real sacrifices, personal and financial, associated with Reserve service, but most of them know that a call up is a very real possibility, and they receive intangible rewards from serving their Nation. That, as you know, doesn't make it any easier to pay the bills back home, but most of them have taken steps to cover themselves, at least for the kind of periods of time they could reasonably expect to be called to Active duty.

Mr. **Bilirakis**. I wonder, along with the recommendations that the chairman asked for earlier—and many of you, of course, have made some in your summaries here—if you couldn't also share with us some of the real world experiences that you are running into, including all three Departments, regarding people who are called into either the Active duty Guard or the Reserves.

Mr. **Duncan**. This comment won't answer all of your questions, but I am sure Mr. Jehn would second it. I can't begin to tell you about the quality of the people who are serving in both the Active and the Reserve forces. The level of motivation continues to astound me, and I have been looking it straight in the face for several years now—the kind of people we have been able to attract, who the Nation has attracted to the Armed Forces in recent years; they are willing to do an awful lot.

Mr. **Bilirakis**. Of course, they haven't been called up in recent years. Now they are being called up, and I am sort of wondering what might happen, what the actual experience will be in terms of future enlistments into the Reserve and National Guard as a result of this.

Mr. **Wylie**. Will the gentleman yield?

Mr. **Bilirakis**. Yes, sir. My time has really run out.

Mr. **Wylie**. If I might just have 30 seconds of additional time.

The **Chairman**. The gentleman is recognized for a brief statement.

Mr. **Wylie**. I just think the point ought to be made, though, that you have to take them sort of on a case-by-case basis. It is possible that we could set some level of compensation in hardship cases. But I know of a personal example, a good friend of mine who is an investment banker. He makes a high income. He is in the Ohio Air National Guard. He volunteered right away. He is a major; he is a pilot; he has an air refueling plane that he flies over there. He goes in every day and calls his wife and family from over there. He did it for patriotic reasons. He was in the Ohio Air National Guard for this very reason. Now there is no way you could possibly compensate him in an act like this. It just wouldn't be feasible to say that everybody is going to earn whatever they earned in civilian life.

Thank you. I just needed to make that comment.

The **Chairman**. I think that will be all for the panel then.

Let me recognize Mr. Gilman. He was supposed to be on earlier, and we didn't get him, and then I will come back to you. Then we will dismiss the panel and call up the second panel, John.

STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. **Gilman**. Thank you, Mr. Chairman. I want to thank the committee and Senator Cranston, who co-chairs the joint committee, for this opportunity to appear before you to discuss the adequacy of the Soldiers' and Sailors' Civil Relief Act and its impact on the financial obligations of servicemembers.

Yesterday, I introduced H.R. 5569, legislation amending the Soldiers' and Sailors' Civil Relief Act, to enhance the protection for members of the Armed Forces on Active duty, including members of the Reserve components.

When a reservist is called into Active duty, his earnings, as we know, are considerably reduced, and, as a result, the reservist may be unable to meet his obligations—his auto, mortgage, or personal loan payments.

In 1940, when Congress enacted the Soldiers' and Sailors' Civil Relief Act, it was intended to protect the service members' interest when called into Active duty. One interest which Congress apparently overlooked was rent. Congress did include a provision under the housing section of the Soldiers' and Sailors' Civil Relief Act to protect the individuals from being evicted, but that was only for a 30-day period, and the legislation only protected the reservist's dependents from being evicted as long as the rent didn't exceed $150 per month, and, as was indicated earlier, there was only one court case that we know about that allowed it to go up to $364 to take care of inflationary problems.

My legislation would adjust the existing rent ceiling of $150 and move it upward to at least $600, and on December 1 of each year the rent limitation would be increased by the same percentage as the retired pay of a member of the Armed Forces, in order to take care of cost-of-living adjustments and inflationary considerations.

Additionally, the landlord would not be able to evict the reservist and his family during the service person's Active duty. The present provision, as I indicated, allows only a moratorium for a 3-months period. This would remove that moratorium and prevent eviction during any part of the service person's Active duty.

Under the present laws, reservists are experiencing difficulty in meeting high rent payments. Take, for example, the reservist making $50,000 a year with a wife and several children. When he is called to Active duty, his salary could be reduced as much as 50 percent, if not more. How can a service person continue to pay high rent and support a family while on Active duty with those kinds of provisions?

My legislation will protect reservists who cannot make those high rent payments by placing a stay on the lease as long as the reservist is on Active duty for more than 30 days, and during the period that a stay is placed on the lease the reservist would have to pay the amount agreed upon by the reservist and the landlord that would correspond with the sum of any basic allowance for quarters and variable house allowance to which the reservist is entitled while on Active duty. The amount of agreed rent that is unpaid during the period of Active duty would bear interest at a rate of 6 percent and would be repaid in equal monthly installments beginning 1 month after the termination of the period of Active duty. The unpaid rent would be paid over a period equal to four times the number of months the reservist was actually on duty.

Mr. Chairman and my colleagues, I would like to touch on one more item. Later today, our House Post Office and Civil Service Committee on which I serve will be holding a hearing on legislation, H.R. 5563, to provide our military personnel in the Middle East with mailing privileges that will allow them to correspond with families and friends in the States free of charge.

As my colleagues may be aware, similar legislation in the form of an amendment was offered and adopted in the Senate on Monday of this week, an amendment to the Treasury, Postal Service, and general Government appropriations bill. Present statutes allow that privilege when troops are in an actual state of war. However, it does not address the situation that we have now with so many of our men and women being deployed on foreign soil for what we hope will not be a long period of time but could be a long period of time without an actual declaration of war.

I was pleased to join with the chairman of the full committee, the gentleman from Michigan, Mr. Ford, and the chairman of the Subcommittee on Postal Operations and Services, Frank McCloskey, in introducing the bill. It is our intention to place the bill before the House as early as next Monday on the suspension calendar. It is my wish that this relatively small effort will serve to lighten their loads and spirits while they await the outcome of this confrontation so far away from their homes.

So permit me once again to express my appreciation to you, Mr. Chairman, for permitting me to interrupt the panel and to present my thoughts, and I hope that my colleagues on the committee will be supportive of the rent proposal that we are indicating. Mr. Penny had already stressed this issue as an important one, and I hope we can have support from both the committee and from the administration with regard to that proposal.

Thank you, Mr. Chairman.

[The prepared statement of Congressman Gilman appears on p. 101.]

The CHAIRMAN. Thank you, Ben.

Alan Cranston earlier mentioned the bill that had been passed in the Senate last Monday. We didn't have the information that it is moving in Post Office and Civil Service, and that is good information. I am sure it won't have any problems and that we will be free mailing to our forces in the Persian Gulf.

Thank you. And we will look at the other matter that you also mentioned.

Mr. GILMAN. Thank you.

The CHAIRMAN. I have Senator Murkowski's statement for the record, and Mr. Staggers would submit some questions.

[The prepared statement of Senator Murkowski appears on p. 103.]

The CHAIRMAN. One other Member, I believe, wants to question the panel, John Rowland of Connecticut.

Mr. ROWLAND OF CONNECTICUT. Thank you, Mr. Chairman.

My colleagues have asked some excellent questions. I was just looking for a few clarifications. Perhaps Mr. Collins can answer those questions.

First, I was pleased to hear that there are a lot of good reports out there about what employers are doing for their employees when they are called up. Unfortunately, we have read about some employers not being all that cooperative, and I know that you will deal with those situations.

But there are two issues that I want clarified: With regard to medical benefits for reservists called up, or National Guard members, can there be gaps in coverage when they go back for reemployment? In other words, there is no tail to a reservist's medical benefits. Assuming the employer drops the benefits, the military picks up the benefits. I am concerned about a gap when the serviceman returns to employment; that is my first concern.

Secondly, I'm concerned with something that Mr. Smith from New Jersey touched on, and that is the question of preexisting conditions and whether those would be covered, maybe birth defects or even pregnancies, which I am sure are a great concern of many of our reservists out there.

So would you address those issues or at least clarify those for us?

Mr. COLLINS. I will tie them together, since they are very closely related, and I will have to speak in very general terms.

It is our current interpretation that there should be no gaps. What we are hearing—and I have heard some of these stories myself concerning preexisting conditions—should not exist. But that, if you will, is our layman's, or our departmental, interpretation. I fear there will be court cases that will have to be tested in the courts unless we find a way in the near future, and before these events start unfolding, to mediate and conciliate, which I believe we will do, but that is an open issue right now.

Mr. ROWLAND OF CONNECTICUT. An open issue. So it has not been clarified, so we don't know at this point what would happen with preexisting conditions when servicemen and their families return to full employment.

Mr. COLLINS. In general, I have great hopes. It should not be a problem, but it is an issue. I am afraid there will be some cases that will test this situation.

Mr. ROWLAND OF CONNECTICUT. A follow up question to that——

Mr. DUNCAN. Excuse me.

Mr. ROWLAND OF CONNECTICUT. Please.

Mr. DUNCAN. If I could comment, I think I might be of help. I understand that the Internal Revenue Service, within the next very few days, is prepared to issue a ruling which will address the extent of the coverage of the Consolidated Omnibus Budget Reconciliation Act, the COBRA Act, and that that ruling will relate to the health coverage of dependents of reservists who are called to Active duty.

Mr. ROWLAND OF CONNECTICUT. You are saying that there could be an IRS ruling in our favor.

Mr. DUNCAN. An IRS ruling in the next few days that may address that specific issue.

Mr. ROWLAND OF CONNECTICUT. Just one final question. Whether it is the benefits, whether it is employment problems, are we prepared within the Department of Defense to give legal assistance and guidance to the reservist or the Guard Member? I know you have great outreach programs and so forth, but is there assistance in helping that reservist in dealing with the employer?

Mr. DUNCAN. Yes, sir. First of all, we have the entire employer support of the Guard and Reserve system in place with volunteers and so forth. But, beyond that, there is legal assistance available to reservists when they are drilling, before they are activated.

I just happened to bring with me one of the kind of pamphlets that are available. This one happens to be an Air Force Reserve pamphlet. But, typically, anyone in the Selected Reserve is briefed on several different occasions even before they are called, just in the normal peacetime training, on those kinds of issues. Legal assistance is available through any JAG office both on military bases back at home and, as Mr. Jehn indicated, even in the Persian Gulf. So, we think we have that matter covered.

Mr. ROWLAND OF CONNECTICUT. I would encourage you to move swiftly with regard to the preexisting conditions and the apparent gaps in coverages. Perhaps we can resolve those in this committee. Thank you.

Mr. PENNY [presiding]. Mrs. Patterson or Mr. Geren, did you have any questions of these panelists?

If not, we will dismiss the panel with our appreciation. We look forward to the legislative recommendations which each of you have referred to this morning, and we will act expeditiously on those matters when you present them to us.

Mr. JEHN. Thank you.

Mr. PENNY. With that, we will move to the second panel: Col. Eric Johnson, Junior, U.S.A., retired, director of legislative affairs, Association of the U.S. Army; Mr. Charles R. Jackson, executive vice president, Non Commissioned Officers Association of the U.S.A.; Lt. Gen. LaVern E. Weber, retired, executive director, National Guard Association of the U.S.; and Maj. Gen. Evan L. Hultman, executive director, Reserve Officers Association of the U.S.

Do we have everyone in place here?

Colonel Johnson, we will begin with you. Your written remarks will be included in the record, and you are free to summarize as you wish.

STATEMENT OF COL. ERIK JOHNSON, JR., USA (RET.), DIRECTOR OF LEGISLATIVE AFFAIRS, ASSOCIATION OF THE U.S. ARMY

Colonel JOHNSON. Yes, I will make a very brief summary.

I want to thank you for this opportunity to present the views of the Association of the U.S. Army on this most important piece of legislation.

Before making any suggestions for possible amendments, AUSA would like publicly to commend those companies and institutions that have voluntarily put together financial and insurance benefit packages for employees or customers who happen to be reservists who are called to Active duty in support of Desert Shield.

As we see it, the mobilization of military manpower must be a joint and cooperative effort between the Government and the private sector. Efforts to ease the financial burden on mobilized reservists by such companies as Martin Marietta, Wells Fargo Bank, Pepco, Xerox, Fannie Mae, and Freddie Mac are particularly noteworthy and commendable. We hope other employers and institutions will follow their example.

There has been a great deal of discussion on the amendments. While there are several listed, I just want to mention two that I think are very significant. One concerns eviction from leased housing, and it has already been discussed that the limit of protection is $150. But rather than a specific amount, we believe more flexibility would be gained if you made the protection available equal to at least the total of the servicemember's housing allowances. That gives you a great deal of flexibility as far as geographic areas are concerned. Certainly a rental in Spearfish, Iowa, is different from that in San Francisco.

One of the most beneficial protections provided by this act has been the prevention of double taxation of a servicemember's compensation for military service by the States. This may no longer be the case. We are aware of an instance in which a State requires the servicemember's income to be included in State tax returns of the nonmilitary spouse for purposes of determining the spouse's State income tax bracket. This requirement is indirect taxation of the servicemember's military income. With more and more of today's service families described as two-income families, there can be a significant morale problem here.

Thank you very much for this opportunity.

[The prepared statement of Colonel Johnson appears on p. 105.]

Mr. PENNY. We will just move down the table and receive all of the testimony, and then there may be a few questions for each of you.

General Hultman.

STATEMENT OF MAJ. GEN. EVAN L. HULTMAN, AUS (RET.), EXECUTIVE DIRECTOR, RESERVE OFFICERS ASSOCIATION OF THE U.S.

General HULTMAN. Thank you, Mr. Penny.

I am General Hultman, the executive director of the Reserve Officers Association, and in listening to the testimony as well as the questions, I find that every subject that is in my written document to the committee has been discussed, and so I would ask that this document, along with the others, be made a part of the record.

Mr. PENNY. The entire statement will be included in the record. You may summarize, though, if you wish.

General HULTMAN. I would like to make an observation by way of summary. First of all, as one who was a local city solicitor and a county attorney and attorney of a State and a U.S. attorney, I have tried many of the cases of the kind of nature governed by these two laws, that were passed originally back in 1940 and have not been amended too often since. So from that practical experience, I would like to make a couple of observations to you.

One is that we not try and solve all of the infinite individual cases that arise under the kinds of circumstances that we have, because I then get concerned that we will be 10 to 15 or 20 years down the road and the major problems—and I say the major problems—will not have been addressed because of the infinite capability or trying to solve all of the problems in the process.

So I would urge the committees to deal with a number of specific areas which can be dealt with and must be dealt with. They are areas that, basically, first, are in the law and have been in the law—and the law has worked—but that need to be updated to bring us basically not only into the 1990's instead of 1940 but also to bring into focus the impact of the two basic things that have changed, other than, of course, inflation.

One of those changes has been the All-Volunteer Active duty force and Guard and Reserve, and that puts a totally different scenario from what we had at any time in the past, and so we begin there.

Secondly, then, we must continually refer to that Total Force Policy. Many questions must be analyzed carefully with reference to that Total Force Policy, because on the one hand we cannot set standards or do things that are above and beyond that which exist in the Active force. reservists ask nothing more than to be treated equally and fairly. They don't ask to be treated in a different way or given greater advantages, and a number of illustrations have been made of that. They are volunteers; they understand what the problems are and some of those sacrifices that they have got to make back home as well as once they go on duty.

But what they are saying is—and that is what I am saying and I think everyone is saying—we need to bring the law up to date in fairness so that we are treating them honestly and fairly. Those enlisted men and women and those junior officers, who basically are going to make a serious contribution, putting themselves and their families in harm's way, need jobs and job protections, health and health protections, rent and rent protections, those things that are just absolutely basic. If you will address those, which I am sure you are about—and this early hearing is indicative of it—you will have done a great service not only to this great cadre of volunteers but you will have ensured that your legislation and your faith in the Total Force Policy is sound and it will work.

Thank you.

[The prepared statement of General Hultman appears on p. 108.]

Mr. PENNY. Thank you for your testimony, and I couldn't agree with you more about this being a test of the Total Force Policy, and our challenge here in this committee, as you so aptly stated, is to assure that those who are helping us make that policy work aren't encumbered with unnecessary and burdensome difficulties.

Mr. Jackson.

STATEMENT OF CHARLES R. JACKSON, EXECUTIVE VICE PRESIDENT, NON COMMISSIONED OFFICERS ASSOCIATION OF THE U.S.A.

Mr. JACKSON. Good morning, Mr. Chairman.

NCOA is very grateful for the holding of this joint committee hearing this morning to address the Soldiers' and Sailors' Civil Relief Act and VRR, both of which are going to be severely tested in the weeks ahead.

Before I get to the substantive changes that NCOA recommends, I would like to comment and say that probably the most important thing that NCOA believes this committee could do would be to rewrite both of these bills, and that means just to rewrite them in language that is more easily understood and more readily identified as far as the intent is concerned.

The Soldiers' and Sailors' Civil Relief Act was written over 50 years ago, and at that time the style and the meter was common to legislation. Today, it needs to be rewritten so that it is more easily understood and the intent of the law more easily understood by those who read it.

Getting to our substantive changes, we want two particular ones: One, the $150 limit which everyone has addressed this morning. NCOA thought of several ideas as to how we could change that, and we finally concluded that no individual is going to overextend himself in a lease agreement under the idea that he may be called to Active Service at some time in the future. Therefore, we see no possible use, or no benefit, in having the cap on the lease figure, and, as such, we recommend that it be totally eliminated from that provision in the law.

My second change concerns the 6-percent annual interest rate, and the first thing I would like to emphasize is that NCOA would love to see this rate remain in place without any change whatsoever. However, it seems inevitable that this is going to be a topic of discussion during hearings to come, and therefore if a change is to be made in that particular interest rate cap, we would like to submit a suggestion that that interest rate cap be changed to nothing more than the Federal Reserve discount rate. That would be the actual amount that it would cost the lender to borrow money, and that would be the actual amount that he would lend it at, so that a lender would make no profit on a loan made to a reservist or a servicemember called up, and yet that servicemember would still be relieved of a substantial financial burden, which we believe was the intent of the law.

We also advocate several other changes in SSCRA. We think that there should be a provision allowing reservists and Guardsmen and others ordered to Active duty an opportunity to nullify performance bonds and contracts for personal service without penalty of recourse. That was discussed a little earlier, and we think that really applies a great deal, particularly when you get into the construction trades. Every Navy Seabee construction battalion consists entirely of people in the construction trades, many of whom are individual small contractors who have personal performance bonds and licenses on the line. There should be some way to nullify those contracts in the event that they are called to Active duty.

We need provisions to reinforce the protection of servicemembers so that they can only be sued in courts of competent jurisdiction and require that such statements be on any lawsuits presented to a servicemember called up for Active duty to prevent some of the forum shopping which has gone on around the country in recent years.

SSCRA should be amended to preclude States from including Reserve and Guard pay in the computation to determine unemployment compensation benefits upon the loss of primary employment of a reservist or Guardsman, and SSCRA seems to be an appropriate place to fashion provisions of law to protect retired servicemembers, regular and reserve, against unfair claims incident to Active Service, such as the case where a State will say that you spent 5 years of your career in this State, and although you live in another State and are retired there, we want to claim part of your retired pay as a sort of source tax because this is where it was earned.

Turning to VRR, Mr. Chairman, on page 7 of our original statement, we adopted a 1988 recommendation for nondiscrimination proposed by the Sixth Quandrennial Review of Military Compensation. We have subsequently determined the Sixth QRMC proposal was in error and that relief was provided by Public Law 99-576 nearly 2 years before the QRMC report was written. Accordingly, we ask the committee's leave to submit an amended statement for inclusion in the permanent record of these hearings.

Mr. JACKSON. We could find no other obvious errors in the VRR, but we feel that we need to make some changes to treat all servicemembers more adequately the same. For example, there are some gross discrepancies. An inductee who is returning to his job is allowed retention rights for a year without dismissal, unless dismissed for cause, but a reservist only has 6 months retention protection under the same circumstances. We think that they should both be treated equally.

In conclusion, we recognize that these hearings are called in response to the recent deployment and activation of reservists to the Persian Gulf, and, in fact, many of the recommendations that we have made in our prepared statement may not be limited to the current deployment of troops. However, the association believes that these are important issues that are germane to the acts under review here this morning and they must be addressed, and hopefully the committee will take the few extra days it might need to enact all the necessary changes.

Thank you very much.

[The prepared statement of Mr. Jackson appears on p. 115.]

Mr. PENNY. Thank you for your testimony, and it certainly is appropriate to mention other related items this morning, and we will take those into consideration.

General Weber.

STATEMENT OF LT. GEN. LAVERN E. WEBER, (RET.), EXECUTIVE DIRECTOR, NATIONAL GUARD ASSOCIATION OF THE U.S.

General WEBER. Thank you, sir.

Mr. Chairman, distinguished members of the panel, I appreciate the opportunity to speak this morning for the National Guard Association on issues pertinent to the subject of our emergency.

Like other witnesses on this panel, most—in fact, all—of my subjects have been covered previously and have been discussed in depth with a number of suggested solutions, most of which we agree with. But I would restate our concerns as a matter of emphasis.

First, we strongly support provision for relief of the medical malpractice insurance. As Total Force has developed, more and more responsibility has been passed to the Guard and Reserve to meet requirements for the health care provisos for the Total Force. In many instances, as has been discussed earlier, these true professionals are really true volunteers. They understand, if mobilized, that they cannot be compensated in like amounts to their earnings in the civilian world, but they are true volunteers, and we need to assist them with their medical malpractice insurance dilemma.

We also agree that it is time to raise the maximum rent for which eviction relief is provided. The $150 ceiling which was established in 1966 certainly has no relationship with today's issues. We agree that some of the technical provisions of the Soldiers' and

Sailors' Civil Relief Act and the 6-percent interest ceiling likewise require some clarification.

We are concerned—and it was discussed at some length this morning by the folks from the Veterans' Administration—with the lenders dealing with the VA home loans wherein the individual members of the Guard and Reserve have to state that they are, in fact, members, and under those conditions the lender may very well deny the VA loan as a result of this condition of alert or call-up.

I would like to state here that the Guard and Reserve have experienced many changes in the alert list. Today one alert list is addressed, and tomorrow there are modifications to that list. These uncertainties contribute to possible inequities under this VA loan program that we hope very much could be addressed.

We believe that some provisions should be made to pay the variable housing allowance to those members serving under section 673b regardless of the length of service. We strongly urge legislation to authorize continuation on Active duty for injured or ill members that are on Active duty voluntarily or otherwise for less than 30 days, and we are apt to have a large number of those.

The last issue that I would raise is the limitation on SGLI of $50,000. It is our view that that should be raised to $100,000 as the law now provides for firefighters and law enforcement officers killed in the line of duty.

These issues, we feel, all should have high priority and be addressed as rapidly as possible.

Several panelists this morning have made reference to the great support that the Guard and Reserve receive from employers, and that is really an understatement. We have wonderful employers out there that have done great things for their Guard and Reserve members. Reference was made this morning by Mr. Lowery; in fact, he read from the Wells Fargo Bank statement of their support for Guardsmen and reservists, and I would add that in the instance of Martin Marietta, Mr. Norm Augustine, the CEO of that organization, has issued a very supportive policy. With the permission of the committee, I would suggest that you let us accumulate a number of these statements of support and enter them into the record of this hearing.

Mr. PENNY. Without objection, we will accept those into the record.

General WEBER. Thank you, sir.

(See p. 130.)

General WEBER. Thank you. That concludes my remarks. I am prepared to answer questions, should you have any.

[The prepared statement of General Weber appears on p. 119.]

Mr. PENNY. Thank you, General Weber.

First of all, I want to express my appreciation to General Hultman for drawing attention to the interagency task force which was supposed to recommend adjustments in the veterans' reemployment rights legislation. We have been waiting on that report for about 3 years now. My subcommittee, the Education, Employment, and Training Subcommittee, had scheduled a hearing at the end of this month on that very issue, to try and prod the Department into submitting its legislative proposal, and we incorporated that issue into this morning's hearing because of the urgency of the situation due to the operation in the Middle East. Anything you can do to help us bring about a conclusion to that study and to get that legislation before the committee would be appreciated.

I want to ask Mr. Jackson to expand on the recommendation which you made on page 7 of your testimony regarding expansion of services to reservists through local veterans' employment representatives. Are you suggesting here that LVER's provide employment assistance to reservists as they do now to all other veterans?

Mr. **Jackson**. Yes, Mr. Chairman, that is exactly what we are suggesting.

Mr. **Penny**. That is what I was hoping you were saying. I just wanted to get that clarified.

We are facing a much different situation today than we were when this legislation, in both cases, was first considered, but particularly the Soldiers' and Sailors' Civil Relief Act. At that time, if you were called to Active duty, it was for an indeterminate time frame, and, as it turns out, it was several years. Now, in many cases, we are looking at a relatively short call-up period. Are there any suggestions that you might make beyond what you have already included in your testimony about how we might adjust our legislation to more accurately reflect the current force structure and the nature of the call-ups in today's world environment?

Mr. **Jackson**. We have talked about this, and we have thought about some of the ideas that have come up which provide different benefits for reservists called up for different periods of time. One of our ideas was that perhaps we shouldn't be considering the amount of time. As you pointed out, during the forties when a reservist was called up, it was duration plus six. Now reservists are called up for 90 days, 180 days, 2 years; they volunteer for two or 3 years of Active duty.

We believe that if an individual reservist or Guardsman is on Active duty, whether he serves for 90 days, 180 days, or 2 years, the benefits that should accrue to him from that service as a veteran should be the same, regardless of length of service, and that we should start to treat reservists and Guardsmen at different lengths of service exactly the same when it comes to veterans' benefits, as long as they perform their service honorably.

Mr. **Penny**. General.

General **Hultman**. I would add just a footnote, Congressman Penny, and I understand what Mr. Jackson is saying, but I think most reservists and Guardsmen feel that they should be treated in the sense of fairness and equity but not the same, because we aren't the same in terms, for example, of serving 365 days of the year we have never asked that we get the commissary for 365 days of the year. What we have said is that we ought to be treated fairly; for those days that we do serve, we ought to have the same rights, benefits, entitlements, and so forth that our brother and sister on Active duty have.

Here, I think, we are talking about the fact that this call-up under 673b is altogether different than it was back in 1940. There are gaps because of that, and, as Mr. Smith clearly referred to on that medical issue earlier, if we look at those gaps and take care of those gaps, that is being fair. That is all reservists and Guardsmen ever asked, only that, but not to be treated the same in the ultimate that we get all the rights and all the benefits to the same degree as an Active duty counterpart, because that isn't fair to our Active duty counterpart, and we have never asked that under any circumstances.

Mr. **Penny**. If I might, let me request of each of you, on behalf of our Senate colleagues, a written response to this inquiry. Would you each be willing to look into the matter and submit for the record any information you can provide regarding whether and to what extent reservists are experiencing discrimination in the credit, housing, insurance, and employment fields, and what legislative remedies your organization would support. When I say "reservists," I mean reservists and Guard members. We would appreciate it if you would submit that for the committee record.

Mr. **Penny**. I have one last question. I am making the assumption that a number of servicemen who will be called to Active duty are going to take a notable pay cut, and many of them may opt to cover their families under CHAMPUS. What do you have to say about the adequacy of CHAMPUS coverage compared to the kind of coverage you would typically obtain from your private sector employer?

Colonel **Johnson**. It seems to me one of the major differences would be dental.

Mr. **Penny**. In other words, anything that is a nonemergency procedure is not covered.

How about the deductibles? Are they comparable to a decent private sector plan?

Colonel **Johnson**. Yes.

Mr. **Penny**. Okay.

One of you—I can't recall who offhand—mentioned the continuation of some kind of health coverage until you are back on the job in the private sector and the private plan has kicked in. Which one of you suggested that?

General **Hultman**. I referred to it on page 5 of my testimony, and that might be what you are referring to. That was the comment I was referring to when I referred to Congress.

Mr. **Penny**. Okay. I think that is a helpful suggestion as well, because we don't want any gaps here if we can help it, and if you drop a private sector plan, get yourself covered under CHAMPUS, and then you leave the military and you have a void there, that is not what we would like to see. We need to make sure that the families are covered.

General **Weber**. I would suggest, under the CHAMPUS issue, that we have two problems of concern that need to be addressed. The first one, again, is education, and that was discussed several times this morning, getting the word out to everyone who is now eligible; and, secondly, the limited CHAMPUS application that we have had in the Guard up to this point. The administration related to paying the bills, and these sorts of things have been very, very difficult. We need to figure out a way to streamline those.

Mr. **Penny**. One last matter, and that is to compliment each of your organizations for what they have already done to respond to requests for information about the Soldiers' and Sailors' Civil Relief Act and the Veterans' Reemployment Rights Act and to urge you to continue to do all you can to help those of us in Congress and those within the Departments and agencies in getting that necessary information out to these personnel.

Are there any other questions from other Members?

Mr. Smith.

Mr. SMITH OF NEW JERSEY. Thank you, Mr. Chairman.

I would like to ask the panel, any who would like to answer: on the issue of child support, it is my understanding that reservists are still responsible for child support notwithstanding their call-up and that any reduction, if there is to be a reduction, is to be negotiated on a case-by-case basis by way of the courts.

Have you been receiving inquiries in your respective organizations as to the issue of child support, and do you think that Congress ought to address this issue on a broader basis?

General WEBER. Speaking for the Guard Association, we have not. I cannot speak for the Guard Bureau. They may or may not have had inquiries; we have not.

General HULTMAN. I have had some at the Reserve Officers Association. Of course, again, that is, I think, generated by the change in times, with so many single member soldiers, sailors, marines, airmen, and so forth, and the large entry of women both in the Active and the Reserve forces.

But I would say this. I haven't, from that, concluded that it has been an acute problem. I think it is clearly one, again, that is a change from what the past has been. It is a new equation, and we need to look at it and look at it very seriously. We do have the double parent situation with both on them, like in the case of my own daughter and son in law, both of them in the military service, or the single parent especially. I think the experience we are getting out of what is now going on is going to be very valuable to all of us in providing that information, Chairman Penny, and as you have requested, Mr. Smith, to find out out what those problems really are and the degree of them, that we might deal with them honestly and fairly.

But I can say to you, I have been astounded by the response of all of the entities—the employers, the credit institutions, the rental people, et cetera. The impact has been absolutely positive, no question, because they are volunteers—they are great Americans who are giving that extra. I would say to you, as one who has been in the courtroom on these two pieces of legislation many times over the years, both on the Governmental side as well as on the individual side, we have got to make absolutely certain in the process that we do as much as we can by statute to set the policy and not have to leave it out there to the goodness of the hearts of all of these wonderful Americans.

Let me use one illustration and start with Government itself. The local, the State, and the Federal Government, very frankly—and I will say it for a number of the agencies that are involved in the enforcement of a number of these things—were the greatest problem. We have more problems with the entities of Government on the rights and the obligations that we are talking about that are even in the statutes today than we do with those entities out in civilian life.

So I applaud when the agency of Government at the national level says, "Here is the policy of employment and reemployment we are going to follow," and that is great, but all the agencies are left to go do whatever they are going to do, and in a budget crisis situation I know what the impact is going to be, what the facts of life are, and it is only natural, it is only human.

So to the degree that we can put these kinds of standards into law, we are going to make absolutely certain that we have compliance in the process, and not just out of the goodness of the hearts of those who go do the extra mile as did the bank on the west coast. But there are still those exceptions out there who are not going to meet that standard, who are not going to do it, and that is the entity we have got to make sure is covered because of that individual reservist or a person on Active duty; they still have the acute problem.

Mr. **Smith of New Jersey**. General Hultman, on the issue of CHAMPUS and the relative worth of that kind of coverage versus that which can be found in the private sector—and Colonel Johnson did point out the dental as one of the more obvious inadequacies of the CHAMPUS program—you pointed out on page 5, and I think it is a very good issue to raise—that preexisting conditions might not be covered when there is resumption of the private sector health care insurance.

All of us have had case work in our district offices where people have gone on to Blue Cross-Blue Shield, or whatever their coverage might have been, only to find that that preexisting condition is not covered, and then they are paying tens of thousands of dollars potentially for surgery and other things that are not covered.

Would you address that issue of preexisting conditions?

General **Hultman**. Yes. I think it is a very critical one, and I think to the degree that we don't address it under the Total Force Policy and the All-Volunteer Force, some of the fallout is going to be those wonderful, dedicated Americans who have much to contribute and want to contribute. When they find that they have a situation when they come back, they are going to do what is only human; they are not only going to say, "I'm not going to continue to serve as a reservist," and they are going to tell their friends and their neighbors and their Congressmen, and everybody else, about it. If the defects aren't remedied, they will destroy the great system that we are about in terms of the Total Force Policy and the All-Volunteer Force.

So I think this is a very critical issue, and the numbers of the dollars that are involved are small, but for each one of those individuals it is everything.

Mr. **Smith of New Jersey**. I thank the panel, and, General Hultman, thank you for that insight. I think that is something this committee has to address, because that could loom as a very real problem, like you said, for those individuals, and it could ultimately do a great deal of damage to the Total Force concept, in general, too.

Thank you. I yield back the balance of my time.

Mr. **Penny**. Mr. Bilirakis.

Mr. **Bilirakis**. Thank you, Mr. Chairman.

I am not going to raise any questions, but I would like to make two or three statements.

This has been an outstanding hearing, because we have learned a lot, but all of the time that we have spent, of all we have hit—Mr. Smith has mentioned child care, which was something I don't think was addressed by anybody—there are just so many other areas that we have got to be concerned about, such as preexisting conditions. Most malpractice type policies these days are "claims made" type policies, which means the insurer at the time the claim is made is responsible for addressing it. So you are talking about people being called into the service, dropping their malpractice policy during that particular period of time, and a certain claim is made on the basis of, supposedly, malpractice which took place long before, and they don't have the policy. How is that handled, and so many of these other things?

I think it is just critical, Mr. Chairman, that these good people along with the Departments share with us the actual experiences of our men and women being called into the service.

We could sit here for hours, I think, and try to cover every eventuality that might occur and not still cover them all, but actual experiences will probably cover virtually all of them. That is what you have got to share with us, Chuck, and the rest of you gentlemen, because if you don't, in the process of our trying to legislate, we are probably going to do an awful lot of good things, but we are going to leave out a few things that maybe should have been covered. That would probably be essentially because we haven't had the actual experiences shared with us. So I feel that it is very, very critical that you do that.

General Hultman, certainly I don't think that the reservists want more than the Active duty people, but I would suggest to you, sir—and I think you would agree with me—that from a hardship standpoint, in a sense, it may be even tougher for our National Guards and Reservists who get pulled in just like that.

General HULTMAN. Absolutely.

Mr. BILIRAKIS. So it is not that they should have more, but we want to encourage people in the future. We are talking about a few decades having gone by here where we haven't had any call-ups, and it has been kind of easy to serve in the Reserves, make a little bit of money in the process, build up towards retirement, you know, that sort of thing, get the eagles or maybe achieve a star or a few stripes or whatever the case may be.

But if we want to encourage that—and I know that Chairman Montgomery, of course, is the Reservist and National Guard guy in the Congress—then we have got to make sure that we treat these guys maybe above and beyond, if you will, and of course a lot of women are being pulled in too. So it is really critical, and where we don't talk about extra special service, on the other hand their problems are going to be somewhat different than the problems of the person who has volunteered and who has been serving on Active duty.

The DEERS application, for instance, which would qualify a person for CHAMPUS, et cetera, if they slip up and somebody doesn't advise them correctly, the families go in for CHAMPUS, and then they don't get it because that application has not been submitted. You know, hopefully, they would be really counseled adequately and in a timely fashion.

So, again, we can only do our job, if you would help us. So you have got to share this information with us on a timely basis in order that we can better know how to rewrite these laws.

Thank you, Mr. Chairman. Thank you, gentlemen.

Mr. PENNY. We will dismiss this panel with our appreciation. You have all presented excellent and very helpful testimony.

We have one final panel: Mr. Lyle E. Gramley, senior staff vice president and chief economist, Mortgage Bankers Association of America; Mr. Donald W. Grigley, senior vice president, Connecticut National Bank, representing the American Bankers Association and the Consumer Bankers Association; Mr. J. Denis O'Toole, executive vice president for Government affairs and operations, United States League of Savings Institutions; Mr. Robert J. Engelstad, senior vice president, mortgage and lender standards, Federal National Mortgage Association; and Ms. Judith A. Kennedy, vice president, Government affairs, Federal Home Loan Mortgage Corporation.

Welcome, all of you, to this morning's hearing. I would remind you all that your entire written remarks will be included in the legislative record, and we would ask that you summarize your testimony and your recommendations as best you can.

It might be easiest for us to start at one end of the table and move on down. We usually start left to right; I think this time we will start with Mr. Engelstad and move on down to the other end of the table.

Proceed with your testimony.

STATEMENT OF ROBERT J. ENGELSTAD, SENIOR VICE PRESIDENT, MORTGAGE AND LENDER STANDARDS, FEDERAL NATIONAL MORTGAGE ASSOCIATION

Mr. ENGELSTAD. Thank you, Mr. Chairman and members of the committees.

I am Robert Engelstad, senior vice president for mortgage and lender standards at Fannie Mae. Fannie Mae very much appreciates this opportunity to discuss with the committees the issues presented by the Soldiers' and Sailors' Civil Relief Act.

Fannie Mae is a congressionally charted, privately owned company whose sole business is to support housing finance through the secondary market for residential mortgages. With our congressional mandate of providing ongoing assistance and liquidity to the primary mortgage market, Fannie Mae is pivotal to home finance delivery. We are the Nation's largest investor in mortgages secured by properties for low, moderate, and middle income families, and a major issuer of mortgage-backed securities, backed by those mortgages.

As of July 31, 1990, we had $110 billion of mortgage loans in our portfolio and had outstanding approximately $268 billion of guaranteed mortgage-backed securities, backed by loans Fannie Mae holds as trustee for the security holders.

Fannie Mae made mortgage money available to over seven million American families during the 1980's. We channeled $450 billion of mortgage money from the financial markets to home buyers who purchased homes getting mortgages with an average balance of $60,000. In the 1990's, we will finance homes for at least 10 million more families.

Over and above what we do for middle income families, we are generating new housing finance solutions aimed at Americans with lower incomes. In the past two years alone, we have targeted over $4 billion to expand housing opportunities for 80,000 low and moderate income American households.

Our mission is directed not only at home buyers but those who rent their homes as well. We have strengthened our Multi-Family Program in the past three years and now have directed over $15 billion to local housing markets for the financing of multi-family housing, keeping rent affordable for 400,000 apartment dwellers with average incomes of $20,000.

Our benefits to housing derive from operating efficiencies resulting from our charter and the large scale of our operations. Most recently, Fannie Mae has become an even more critical buffer to turbulence in the primary markets. Since enactment of reforms in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, many thrifts have curbed portfolio holdings of home loans and increased sales to secondary market investors. Fannie Mae has successfully ensured the continued flow of mortgage credit to home buyers by increasing its share of new mortgages funded and guaranteed.

On August 29, Fannie Mae announced several steps the corporation was taking to ensure that service men and women called to Active duty would receive all of the benefits they are entitled to under the provisions of the Soldiers' and Sailors' Civil Relief Act. At that time, we issued comprehensive instructions to the 2,500 companies that service over six million loans on Fannie Mae's behalf to make sure that these mortgage service companies fully understood the benefits provided by the act as well as Fannie Mae's policies for implementing those provisions, so that the service men and women called to duty would receive these benefits as quickly and easily as possible.

I would like to summarize the act's provisions relating to mortgage finance and Fannie Mae's policies to implement those provisions. The act's provisions are: first, that the mortgage interest paid by a reservist called to Active duty is reduced to 6 percent during their tour of duty; second, that the mortgage payment obligation can be interrupted partially or completely during the borrower's Active duty status if financial circumstances warrant; and, third, foreclosures cannot begin or continue unless so ordered by a court during the reservist's Active duty status.

Fannie Mae's procedures to implement these provisions are as follows: First, Fannie Mae will absorb the cost of the interest rate reduction; Fannie Mae's mortgage servicers and holders of Fannie Mae mortgage-backed securities will not incur losses due to the interest rate reduction. Second, our mortgage servicers may accept the reservist's orders as the only evidence needed to implement the 6-percent interest reduction. In the case of the orders not being readily available or a very quick call-up to Active duty, the servicemember simply can call the lender or even make appropriate plans on a retroactive basis.

Although the act provides for a court petition to review whether or not there is sufficient hardship to warrant the reduction to 6 percent, Fannie Mae is not requiring this. Fannie Mae's mortgage servicers need not determine whether Active duty has materially affected the servicemember's ability to pay the higher mortgage rate.

Fannie Mae also will grant forbearance under which it will accept mortgage payments at less than the 6-percent rate if the reservist cannot make the 6-percent payment.

Complete suspension of payments during the Active duty period also is possible.

Again, while the act provides for suspension of the mortgage payments if the servicemember obtains a court order, Fannie Mae has directed its servicers to provide such relief without the servicemember having to petition the court. Also, Fannie Mae is making all of the benefits of its forbearance plans available to other military and civilian personnel who may suffer financial hardship as a result of the Persian Gulf crisis.

Finally, in those cases where reservists are called to duty who wish to complete the purchase of a new home notwithstanding the temporary reduction of income as a result of being called to military service, Fannie Mae will purchase the mortgage with the lender qualifying the reservist on the basis of his or her full civilian income.

In conclusion, Fannie Mae has responded very quickly to make sure these benefits are provided to the service men and women as quickly and easily and possible. As these brave members of the Armed Forces head off to serve their country under very challenging conditions, Fannie Mae does not want a mortgage payment to be among their precious thoughts of their loved ones they are leaving behind.

I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Engelstad appears on p. 137.]

Mr. PENNY. Thank you, Mr. Engelstad.

Mr. O'Toole.

STATEMENT OF J. DENIS O'TOOLE, EXECUTIVE VICE PRESIDENT FOR GOVERNMENT AFFAIRS/OPERATIONS, UNITED STATES LEAGUE OF SAVINGS INSTITUTIONS

Mr. O'TOOLE. Mr. Chairman, thank you.

Members of the committee, I am J. Denis O'Toole; and I am the executive vice president for Government affairs for the U.S. League of Savings Institutions.

In light of the fact that my statement is in the record, I would like to make four major points, Mr. Chairman.

I am here, today on behalf of the savings and loan business, the thrift business. The business is, of course, in transition. But as much trouble as we are having in the thrift business, there are 2,500 private sector companies that are profitably operating and well capitalized.

I think one of the themes in this morning's hearing is the fact that there is a responsibility on the part of the private sector to be as cooperative as they possibly can in these trying circumstances. This certainly is the intent of our association and the 2,500 members that I represent.

Some previous panelists discussed the problem and concerns about discrimination towards people in the Reserves or in the military. I would suggest that while that may potentially be a problem, my own sense is that it is good business practice to be cooperative and to be proactive in this area. From the trade association point of view, we have done everything that we can to communicate with our members to inform them of what the law is and to suggest that our people be positive in their dealings with people called into the military.

The financial services business today is a very competitive business. There are good business reasons to cooperate with people in the Reserves. Ultimately you are looking at a long-term customer relationship. So we encourage our people, from a business perspective, to look at the reservist as a business opportunity.

My Second point is that as regulated depository institutions, we do enjoy the benefits of Federal deposit insurance. We do have a patriotic responsibility to work with the people called into the military.

The third point I would like to make, Mr. Chairman, is the fact that, while the numbers at this point of reservists called to duty will probably not constitute a major problem because of the relatively small number of people with loans. I think this committee is absolutely acting in a responsible manner by exercising its oversight responsibility.

The 40,000-plus reservists being called up does give us some inkling of potential problems that could come about as a result of two things: Either we could increase the number of people called into the Reserves, or there time of duty could be considerably extended. In any case either event could have some potential impact on the financial services business.

With the present plans for a limited call-up, of the one major concern that I have as I look over the situation is that, in calling up some Reserve units, particularly from small towns and rural areas, I can potentially see how small banks or savings and loans in rural areas could be adversely impacted.

I think everyone who testified this morning has agreed on this law, which has been on the books since the early 1940s' and really has a history that even goes back to World War I, it is probably time to review it and to update it. I would support the premise of some of the earlier witnesses who said that we should review the Act now but thought it probably is too difficult to change this law in the waning days of the 101st Congress. I think setting up a record now for potential amendments in the 102nd Congress makes a lot of sense.

I would make the point, as other people have made, that our society is vastly different in the 1990's than it was in the 1940's. Again, from the financial services perspective, a couple of changes that I think are crucial are: number one, today, the financial services that we offer to customers are vastly different than we did 40 or 50 years ago. Today, we are much more involved in credit cards; and the institutions that all of us are representing this morning mostly are involved not only in their local communities, but they are involved on national and even in some cases international lending. We now operate in an environment where we have on the books many laws that were not there in 1940, such as the Equal Credit Opportunity Act. ECOA, for example, prohibits discrimination in a wide way across the board. That results in the fact that today you have many people that are mortgagors that are called "nontraditional households". That is to say that today we look at two and, in some cases, as many as three people originating a loan, and some of the rules in the Soldiers and Sailors Civil Relief Act need to be updated to reflect that kind of market reality.

Finally, the greatest sensitivity that the people I represent here today is to communicate to you that regulated banks and thrift associations have much less discretionary authority because the bank regulatory agencies are taking a much stricter interpretation over what kind of latitude lenders have in giving forbearance.

In the minute that I have left, I would say that the area that we would specifically urge the committee to look into would be the whole area of the rate. Some earlier witnesses mentioned that there are some problems with the 6-percent interest cap. I agree with the suggestion of Mr. Jackson and other witnesses that we move towards something which would be indexed to a Treasury bill or the Federal funds rate. This makes a lot of sense.

Another problem that we see is the problem of loan amortizations. Today, because of the high cost of mortgages, it is one thing to give interest rate relief down to 6 percent, but you frequently have substantial mortgages where the amortization of the principal is quite sizable, and it is very unclear to us what is required in that area.

Finally, we would appreciate the committee's looking into this situation. Many banks and savings and loans are operating today under capital plans which are agreed to by their respective regulators. If you have a local situation where you would have a Guard unit or a Reserve unit called up and that particular local community were economically impacted, that could have a substantial impact on the bank or the savings and loan, which could impact its capital situation. Obviously, I don't think the intention of this law is to in any way put that institution out of operation, but there needs to be some intergovernmental coordination between the requirements in the Soldiers' and Sailors' Civil Relief Act and other laws that are being authorized by the banking people.

Thank you very much for the opportunity to testify.

[The prepared statement of Mr. O'Toole appears on p. 142.]

Mr. Penny. Thank you.

Mr. Grigley.

STATEMENT OF DONALD W. GRIGLEY, SENIOR VICE PRESIDENT, CONNECTICUT NATIONAL BANK, REPRESENTING THE AMERICAN BANKERS ASSOCIATION AND THE CONSUMER BANKERS ASSOCIATION

Mr. GRIGLEY. Mr. Chairman, my name is Donald Grigley. I am a senior vice president of Connecticut National Bank of Hartford, Connecticut, and I also serve as chairman of the Consumer Credit Executive Committee of the American Bankers Association and as a member of the Communications and Membership Council of the Consumer Bankers Association.

I am pleased to appear before you this morning to testify on behalf of the ABA and the CBA regarding the SSCRA. It establishes certain rights for individuals entering or called to Active duty in the military service. The aim of the act is to protect the members in the Armed Forces from enforcement of certain obligations they are unable to meet because of their absence or because their military pay is insufficient to make payments on debts incurred before Active Service where the ability to repay was based on civilian earnings.

The current law was enacted nearly 50 years ago. Banks complied with the act during World War II, the Korean War, and Vietnam, and now banks again stand ready to help military personnel through difficult times.

The banking industry is committed to support not only the letter of this law but its spirit. While there are certain implementation problems with respect to the act primarily due to changes in lending methods since its enactment, we are not suggesting that any changes be enacted now. When the crisis is over, which we hope will be soon, we certainly stand ready to work with Congress to adopt the act to today's lending practices.

The act addresses several areas, including mortgage and other credit obligations. Our focus today is on section 206 of the act, which provides that no obligation or liability bearing interest rate in excess of 6 percent incurred by a person in the military service prior to his entry into the service shall bear interest in excess of 6 percent unless in the opinion of the court the ability of such person to pay in excess of 6 percent is not materially affected by reason of such service.

In many instances, banks are accommodating their customers to an extent even beyond the specific requirement of the act. Some banks, for instance, are deferring all payment of principal and interest until after a reservist is relieved from Active duty. In these cases, no payments are due and no interest accrues during the period of Active duty.

Some credit card issuers are waiving minimum payment requirements for a period of time. Some banks are also providing toll-free numbers to answer questions and provide information. Where the act is ambiguous or unclear, banks are interpreting the act liberally in favor of the reservists.

The ABA and the CBA have responded to hundreds of telephone calls and inquiries on this act. The ABA has provided banks a memorandum alerting them to the act's provisions and other preliminary guidance. The CBA has also been providing members information on the act. We are submitting those documents for the record. We are also submitting a copy of a document analyzing the act, published by the American Bankers Association in 1961.

Thus far, the direct costs of the interest rate reduction have been minimal, since the number of reservists called up has been relatively small on an individual basis. Nevertheless, banks have had to mobilize to review and analyze the law, develop and implement policies, advise and educate their staffs and customers, draft modification agreements and disclosure documents, and develop operational procedures and systems to process their requests for interest rate reductions. As in the past, banks are willing to undergo these efforts to assist activated military personnel.

The renewed utilization of the act has presented many difficult questions, because the original law could not have anticipated the complexities and the variations of credit products in today's marketplace, nor the automation of the loan processing system. Moreover, many laws governing banks and credit transactions which may conflict with the act did not exist in 1940.

For banks, a major consideration in responding to the requests for interest reduction is the inherent limitations of their operating systems. The resultant operational difficulties arising in implementing the act are manifested in various ways. Because of the computer system limitations, banks are compelled to revise and complete manually loan payment schedules and related documents. While automated loan systems have greatly improved loan processing accuracy and efficiency, they often lack the flexibility to modify terms and calculations for individual loans. If the number of requests to banks remain small, the manual review required is usually manageable. However, expenses and operating complications increase with the number of requests. Our written testimony explains examples of some of those complications.

We do believe that it is urgent to review or amend the act today. We believe that in the future Congress should review and modify the act so that it more appropriately reflects today's environment. The ABA and the CBA would be pleased to work with Congress when it elects to take action to modernize this law.

In closing, let me again reiterate that America's banks have always complied with this law and are gladly doing so today in regard to those personnel called to respond to the crisis in the Middle East. We appreciate this opportunity to testify today and would be glad to answer any questions.

[The prepared statement of Mr. Grigley appears on p. 147.]

Mr. PENNY. Thank you, Mr. Grigley, for your testimony.

As you might have gathered by the lights on the clock and the buzzers, there is a vote on the House Floor right now. It shouldn't take us more than about 10 minutes to go over, cast our vote, and return, and at that time we will conclude with the final two panelists. We will stand in recess for about 10 or 15 minutes.

[Recess.]

Mr. PENNY. Let us pick up where we left off. I would ask Mr. Gramley to present his testimony, and we will conclude with Ms. Kennedy, and then there may be some questions for the panelists.

STATEMENT OF LYLE E. GRAMLEY, SENIOR STAFF VICE PRESIDENT AND CHIEF ECONOMIST, MORTGAGE BANKERS ASSOCIATION OF AMERICA

Mr. GRAMLEY. Thank you, Mr. Chairman. I am appearing before you today as chief economist of the Mortgage Bankers Association.

The Soldiers' and Sailors' Civil Relief Act was passed in 1940 and amended in 1942. It was the 1942 amendment that contained the ceiling interest rate provision. When the 1942 amendment was passed, interest rates were dramatically lower than they are today. For example, the yield on 3 months Treasury bills was just 0.3 percent in that year, compared with approximately 7.5 percent today. The FHA mortgage rate in 1942 was 4.5 percent, compared with 10 percent today.

At today's interest rates, the 6-percent ceiling would apply to all mortgage loans of any reservist whose financial position was materially affected by the call-up. Who absorbs the losses resulting from the ceiling will vary with the type of loan. For mortgage loans made and held by a portfolio lender, such as a commercial bank or a thrift institution, the lender would lose approximately a third or a little more of the expected interest income on affected loans. For loans in mortgage pools, the loss would be handled differently. About a third of all outstanding one- to four-family mortgages are held in such pools, and two-thirds to three-fourths of the mortgage loans originated in recent years are in these pools. In this case, the ultimate lender holds a security issued by Fannie Mae, Freddie Mac, or Ginnie Mae. The ultimate lender in these cases will not lose interest income because payment to the security holder is guaranteed by the agency issuing the security.

Fannie and Freddie have announced that they will absorb the losses resulting from application of the ceiling to loans which back their mortgage-backed securities. Ginnie Mae, however, has announced that, with respect to its securities which are backed by FHA and VA loans, losses resulting from application of the cap must be absorbed by the mortgage servicer.

During the past five years, a mortgage banker's net income from servicing has amounted to about one-eighth of one percent of the loan being serviced. If the mortgage banking servicer is required to pick up the interest in excess of 6 percent the servicer's contribution for any time period would equal 25 to 30 times the net income earned from servicing the loan during that time period. The 1942 amendment to the act could not have, of course, contemplated such a burden because mortgage pools did not exist at that time.

The mortgage banking industry would be particularly hard hit by the interest rate provision of the act. Approximately three-fourths of FHA and VA loans are originated and serviced by mortgage bankers, and virtually all of these are in mortgage pools. The Economics Department of the MBA has tried to estimate what the interest rate provision of the act might cost the mortgage banking industry. The estimate is necessarily rough, but our best judgment is that if all of the some 50,000 reservists who are home owners were eligible for relief under the act, the cost to the mortgage banking industry would be about $15 million at an annual rate.

What is perhaps most disturbing about the impact is its random incidence. Some mortgage lenders may be heavily affected and others not at all. The incidence of the act in dealing with the financial burdens of reservists is also selective. Home owners with large mortgages get more assistance than those with small ones. reservists with financial problems in areas other than borrowing may receive little or no help.

I am not a lawyer, but what I have read about the act suggests that its language, if not clarified, might give rise to legal problems in determining who is eligible for assistance.

The 1940 act provided relief to service personnel materially affected by their military service in terms of complying with financial obligations. The 1942 amendment provided that the relief applied only when the ability to meet financial obligations has been impaired. Neither subsequent legislation nor court decisions have shed much light on what materially affects or impairs the ability of borrowers to meet their financial obligations.

As Congress reconsiders this act, we would urge consideration be given to clarifying what constitutes "materially affected" and "impairment" of the ability to meet financial obligations and to clarifying also the procedures to be followed by affected reservists and lenders. This could assist both the reservists called to Active duty and the affected lenders in determining what their financial obligations are under the act.

That completes my prepared testimony. Thank you, Mr. Chairman.

[The prepared statement of Mr. Gramley, w/attachment, appears on p. 167.]

Mr. PENNY. Thank you.

Ms. Kennedy.

STATEMENT OF JUDITH A. KENNEDY, VICE PRESIDENT, GOVERNMENT AFFAIRS, FEDERAL HOME LOAN MORTGAGE CORPORATION

Ms. KENNEDY. Mr. Chairman, my name is Judith Kennedy, and I am vice president of Government affairs for the Federal Home Loan Mortgage Corporation, better known as Freddie Mac.

We are proud to play a role in providing relief to servicemembers during this current crisis. Freddie Mac has always been guided by a very simple principle in our mortgage business: Just as no home owner wants to lose her home to foreclosure, no lender or investor wants to own it by default. Accordingly, all of the benefits of our ordinary forbearance policies will be available to servicemembers unable to maintain normal monthly mortgage payments.

Additionally, Freddie Mac has also announced with Fannie Mae, that we will absorb the interest rate reduction required by the act for eligible servicemembers who have mortgages we have purchased. We will also, of course, provide the other relief specified in the act.

By way of background, Freddie Mac was created by Congress to increase the availability and the affordability of mortgage funds for home buyers nationwide. We perform this function by purchasing mortgages from lenders, pooling those mortgages into securities, and selling those securities almost immediately to private investors, like pension funds, both public and private. This ensures that lenders and borrowers in all regions of the country have equal access to mortgage money at the lowest possible cost.

We have successfully carried out this mission without Federal appropriations, budget authority, or any taxpayer dollars. Our work is financed solely by private investors like you and me.

In the last 20 years, Freddie Mac has financed one in eight American homes and 750,000 apartment units. The significant challenge has been to fulfill this housing mission at the lowest possible cost while managing the risks associated with home mortgage lending.

Freddie Mac has always made every reasonable effort to work out solutions for borrowers other than foreclosure. To the maximum extent possible, our forbearance guidelines help any borrower, especially military in this situation, restore their delinquent mortgage payments so that the ownership of the home is never in jeopardy.

Under both our ordinary forbearance procedures and emergency procedures, such as used during Hurricane Hugo or the San Francisco earthquake, borrowers have always repaid the full amount of the deferred interest. In contrast, this act requires us to forgive the difference between the borrower's current interest rates and the 6 percent maximum. This law presented at least two issues for us.

First, would the financial losses associated with owning one in eight American homes provide a material cost to the corporation? At this point we think not; we think we can absorb these losses. Second, how can we best implement the law's provisions? In fact, our issue going forward is how to streamline the processing for eligible servicemembers so that they understand that they have this relief before they leave home.

By the end of next week, we expect to have nationwide procedures available for the 3,000 who service loans for us and lenders who will be dealing with servicemembers. We will rely heavily in this processing on the integrity of eligible servicemembers. We will work closely with lenders to make sure that the relief, both our ordinary forbearance relief and the relief mandated by the act, is available immediately.

Thank you.

[The prepared statement of Ms. Kennedy appears on p. 177.]

Mr. **Penny**. Thank you.

Would any of you have testified differently if this were an all out mobilization?

Mr. **Engelstad**. Speaking for Fannie Mae, no.

Mr. **Penny**. Okay. You would still be prepared to absorb the cost of reducing interest rates on all of these loans, basically on an "as requested" basis?

Mr. **Engelstad**. Consistent with the provision of the act, yes.

Mr. **Penny**. Mr. O'Toole?

Mr. **O'Toole**. We would testify the same.

Mr. **Penny**. Mr. Grigley?

Mr. **Grigley**. Yes.

Mr. **Gramley**. As far as I know, yes, but I would have to consult with my principals.

Mr. PENNY. Okay.

Ms. KENNEDY. Freddie Mac is slightly different from Fannie Mae in that we securetize all of the mortgages we purchase and sell those securities to public employee pension funds. A significant loss in the payments promised to those securities holders could undermine investors' confidence in future investments in America's home mortgages.

So if this were an all-out mobilization, I think we would have to look at the numbers called up, the potential duration, and communicate with the Congress about how current law could affect mortgage rates going forward for future home buyers.

Mr. PENNY. What about the option of kind of taking this to civil court and determining some other interest rate that is easier to absorb?

Ms. KENNEDY. Freddie Mac will not take that option.

Mr. PENNY. Not at this point?

Ms. KENNEDY. No. In fact, if the 6 percent is too high for a servicemember to pay, our normal forbearance procedures will make it possible for the servicemember——

Mr. PENNY. To even go lower.

Ms. KENNEDY. Yes.

Mr. PENNY. Can anyone suggest how those loans backed by Ginnie Mae might be handled by the servicer, the initiator or the servicer of that loan? Are we going to see more of those taken to some kind of a civil court setting in order to avoid dropping that rate all the way down to 6 percent? since that is really leaving those folks more vulnerable than I would guess Fannie Mae or Freddie Mac would be with their huge portfolio. Are you dumping an interest cost on the servicer here that, as a percentage of their total portfolio, would be a much bigger hit to take?

Mr. GRAMLEY. Mr. Chairman, I think that is where the principal problem lies from the standpoint of the mortgage banking industry, but we don't have any specific suggestions this morning as to how it should be dealt with.

Mr. PENNY. Do you anticipate, though, that individual banks are going to be taking that route, or do you think it is more likely that, given the hopefully short-term nature of this call-up, they will simply eat these costs as well?

Mr. GRAMLEY. Our president has sent a letter, which I have attached to my testimony, out to all MBA members encouraging cooperation in this effort, to try to ease the burdens of the reservists called up.

Mr. PENNY. Does that then mean that they will handle this as Fannie Mae and others have, to simply drop the rate to 6 percent on request?

Mr. GRAMLEY. They will have to eat the cost, unless the act is changed in some way to deal with mortgage pools that involve Ginnie Mae mortgages.

Mr. PENNY. Okay. I think what I am going to do for the sake of time and convenience is to ask each of you if you might be willing to respond to written inquiries from the committee. There are a couple of other questions that the staff, for sure, would like us to get nailed down before we move to any other consideration of legislation, and we will present those questions to you and give you some time to get those answers back to us, and we will make sure that the other members of the committee then have an opportunity to review those questions and responses.

With that, I think we will wrap things up this morning. Thank you for your participation. The meeting stands adjourned.

[Whereupon, at 12:15 p.m., the committees were adjourned.]

APPENDIX

HONORABLE G. V. (SONNY) MONTGOMERY

SEPTEMBER 12, 1990

THE COMMITTEE WILL COME TO ORDER.

THIS MORNING THE HOUSE AND SENATE VETERANS AFFAIRS COMMITTEES ARE HOLDING A JOINT HEARING ON THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT, A LITTLE-KNOWN LAW THAT WAS GIVEN ITS PRESENT FORM DURING WORLD WAR II. THIS ACT IS DESIGNED TO PROVIDE CERTAIN PROTECTIONS AND RELIEF TO INDIVIDUALS CALLED TO ACTIVE DUTY AND WHO SERVE ALL OVER THE WORLD. THE VERY NATURE OF MILITARY SERVICE OFTEN MAKES IT

DIFFICULT FOR SOME SERVICEMEMBERS TO FULFILL THEIR FINANCIAL OBLIGATIONS AND TO ASSERT MANY OF THEIR LEGAL RIGHTS. IN MANY CASES MEMBERS OF THE RESERVES AND NATIONAL GUARD MUST LEAVE THEIR FAMILIES AND THEIR JOBS ON SHORT NOTICE, CREATING AN ABRUPT CHANGE IN THEIR LIVES THAT COULD CAUSE MAJOR FINANCIAL PROBLEMS SHOULD THEIR MILITARY PAY BE LESS THAN THEY ARE EARNING IN CIVILIAN LIFE.

IN ADDITION, WE HAVE INVITED WITNESSES TO PRESENT THEIR VIEWS ON THE ADEQUACY OF THE LAW WHICH GIVES VETERANS THE RIGHT TO RETURN TO THEIR JOBS UPON RETURNING FROM ACTIVE DUTY.

Recently the President announced that by October 1st, about 47,000 of the 1.17 million civilians who belong to the Reserves and National Guard will be called to active duty as part of the Total Force serving in the Persian Gulf in Operation Desert Shield. This call up of the Reserves and National Guard has prompted many inquiries to our Committees concerning the protection and relief provisions of these two laws that are available to those who are called to active duty.

This morning's joint hearing will give us an opportunity to hear from the VA, DOD and Department of Labor on the major

PROVISIONS OF THESE LAWS; WHETHER THEY SHOULD BE AMENDED IN ANY WAY, AND WHAT IS BEING DONE TO INFORM ACTIVE DUTY AND RESERVE PERSONNEL OF THE PROTECTIONS AVAILABLE TO THEM UNDER THE LAW.

WE WILL ALSO HEAR FROM TWO OTHER PANELS OF WITNESSES REPRESENTING MILITARY ASSOCIATIONS AND THE FINANCIAL COMMUNITY.

SINCE 1940, PROTECTION HAS ALSO BEEN EXTENDED TO THE CITIZEN SOLDIER WHO LEAVES CIVILIAN EMPLOYMENT TO SERVE IN OUR NATION'S ARMED FORCES BY PRESERVING THE FORMER SERVICEMEMBER'S RIGHT TO RETURN TO HIS OR HER PRE-SERVICE EMPLOYMENT.

SUBSEQUENT TO THE ENACTMENT OF LEGISLATION PERTAINING TO VETERANS OF ACTIVE DUTY SERVICE, EMPLOYMENT PROTECTION WAS ESTABLISHED FOR MEMBERS OF THE SELECTED RESERVE.

HOPEFULLY, THIS HEARING WILL CLARIFY SOME OF THE COMPLEX ISSUES THAT HAVE BEEN HIGHLIGHTED IN THE PRESS DURING THE PAST FEW WEEKS. I WELCOME ALL OF THE WITNESSES, THANK YOU FOR YOUR WILLINGNESS TO APPEAR BEFORE THE TWO COMMITTEES, AND LOOK FORWARD TO HEARING YOUR TESTIMONY.

OPENING STATEMENT
SENATOR ALAN CRANSTON
CHAIRMAN
COMMITTEE ON VETERANS' AFFAIRS

Joint Hearing on Benefits and Services Extended to Members of the Military and Reserves Called to Service as a Result of Operation Desert Shield (Soldiers' and Sailors' Civil Relief Act of 1940 and Veterans Reemployment Rights Law)

September 12, 1990

Good morning and welcome to today's joint hearing. At the outset, I thank my good friend Sonny Montgomery for scheduling this very important, very timely hearing. I am grateful to those of you who agreed, on very short notice, to testify on the important matters we will consider today.

Having just returned last week from a four-day trip to the Middle East, which included a stop in Saudi Arabia where I witnessed the situation firsthand, I can say without question that our presence in the Middle East is not only justified but, unfortunately, altogether necessary. Many of the servicemembers with whom I met expressed concerns about the effect of being called to active duty on their ability to meet financial obligations and about reemployment following their service. As veterans in past conflicts have fought and died for America and all that it stands for, our servicemembers today stand ready to answer the call. We must ensure that their sacrifice does not impose any unnecessary hardship on their lives or on their families.

The Soldiers' and Sailors' Civil Relief Act that we will consider today was enacted by Congress in 1940 to protect individuals called to active duty. It is intended to promote the national defense by suspending enforcement of civil liabilities of servicemembers in order to enable them to devote their entire energies to the defense needs of the nation. For example, the Act provides for forbearance and reduced interest on certain obligations incurred prior to service and restricts default judgments against servicemembers and rental evictions of servicemembers and their dependents.

A number of provisions in the Soldiers' and Sailors' Civil Relief Act are based on financial criteria that have not been updated since the last military call-up of Reserves in 1968. For example, section 300 of the Act provides certain protections for servicemembers and their dependents against eviction from a home for which the rent is not more than $150 a month. The Congressional Research Service has estimated that this figure of $150, which was last revised in March 1966, would have a value in July-1990 dollars of $503.75, using the residential-rent component of the Consumer Price Index, or $609.35, using the overall C.P.I. Personally, I believe that even these adjusted numbers are unrealistically low, considering the rent that even a small family of three or four must pay for a modest apartment or house -- especially in high-cost areas such as my own state of California, which has a large number of the nation's military and reserve members.

The disruption of civilian lives creates additional problems for individuals, such as health-care providers or other professionals who must maintain expensive malpractice insurance, or professionals or business persons who may be personally liable for contractual work interrupted by an unanticipated call to duty. Does current law adequately protect these servicemembers?

Reservists called to active duty also are concerned about having jobs when they return to civilian life -- preferably their old jobs -- and not losing seniority and other job benefits because of their absence while serving their country. Under the Veterans' Reemployment Rights law (VRR) in chapter 43 of title 38, United States Code, individuals who leave "other than temporary" civilian jobs in order to enter active duty in the Armed Forces, voluntarily or involuntarily, are entitled to return to those jobs after an honorable discharge or release from service if they apply for reemployment within 90 days after separation from active duty. For purposes of rights and benefits based upon length of service, the employee also is entitled to be treated as though he or she had never left. Thus, the returning veteran steps back on the seniority escalator at the point he or she would have occupied without the interruption for military service.

In VRR, Congress has recognized that a strong Reserve force is essential for national defense, and that the support of civilian employers is necessary if the Services are to be able to recruit and retain Reserve personnel. Since the time VRR was first enacted just before the United States entered World War II, Congress has provided needed employment protections for Reservists.

However, the Sixth Quadrennial Review of Military Compensation (6th QRMC), published August 1988, noted that, although there have been several amendments to the employment protection laws, there also have been several changes to related laws and programs -- changes that have not been reflected in the VRR law. The 6th QRMC calls current law "a complex collection of provisions that are difficult to interpret, leading to much litigation and resulting in a body of questionable case law."

Needless to say, this situation concerns me, especially at a time when we are asking thousands of Reservists to leave their civilian jobs to serve their country during the Desert Shield operation.

I understand that an inter-agency task force, headed by the Department of Labor, has been working for nearly two years on a comprehensive revision of our employment protection law and soon will make its recommendations to Congress. I look forward to receiving the Administration's proposed legislative package and reviewing it closely.

I am also looking forward to hearing from the various concerned organizations testifying today, and from those who have submitted written testimony, regarding their views on how we can better protect our Reservists while they are protecting us.

The Committees' review of these laws and the protections provided by them, and whether those protections are sufficient, certainly is timely as we begin a mobilization of up to 46,000 members of the National Guard and Reserve. We must ensure that the laws of our country adequately protect the brave men and women who have so selflessly taken on the role of guardians of freedom.

STATEMENT OF HONORABLE BOB STUMP

THANK YOU, MR. CHAIRMAN.

THIS JOINT HEARING WITH THE SENATE ON THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT COULD NOT BE MORE TIMELY. YOU HAVE LONG BEEN THE CHAMPION OF OUR MILITARY RESERVES AND NATIONAL GUARD. YOU HAVE ALSO LONG BEEN THE FAITHFUL GUARDIAN OF THE WELFARE OF EACH OF THEIR MEMBERS.

NOW THAT TENS OF THOUSANDS OF RESERVISTS HAVE BEEN CALLED TO ACTIVE DUTY TO DETER AGGRESSION IN THE PERSIAN GULF AREA, I COMMEND YOUR CONCERN THAT THEY HAVE THE LEGAL PROTECTIONS THEY NEED WHILE PERFORMING THEIR MILITARY DUTIES.

I KNOW THAT CHAIRMAN CRANSTON AND MINORITY RANKING MEMBER MURKOWSKI SHARE THIS CONCERN.

WE HAVE A NUMBER OF WITNESSES THIS MORNING REPRESENTING THE GOVERNMENT, MILITARY ASSOCIATIONS AND FINANCIAL INSTITUTIONS. THEY ARE OF COURSE MOST WELCOME. THEIR VIEWS ARE VERY IMPORTANT AS THE COMMITTEES EXAMINE THE NEED FOR AMENDMENTS TO THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT SO THAT OUR MILITARY MEN AND WOMEN WILL HAVE A COMPREHENSIVE, UP-TO-DATE LAW TO RELY UPON.

THANK YOU, MR. CHAIRMAN.

Congressman Bill Lowery's
Testimony before the

COMMITTEE ON VETERANS' AFFAIRS

Chairman G.V. (Sonny) Montgomery

September 12, 1990

Mr. Chairman, distinguished members of both the House and Senate Committees, I want to commend you for your foresight, caring, and understanding in scheduling this hearing. Our Reserve forces are having problems now and they need to be addressed.

In my hometown newspaper in San Diego there was a recent message to Reservists from a California bank, it read:

> "To ease worries and lessen hardships resulting from an abrupt loss of income, Wells Fargo Bank is immediately suspending personal loan payments for activated Reservists.
>
> "While on active duty, you will not have to make principal or interest payments on Wells Fargo home mortgages, auto loans, credit card balance, or personal loans and lines of credit incurred before activation."

That bank is to be commended. But not all lenders and landlords will follow suit and there is a serious possibility that some Reservists will not be able to make rental or mortgage payments in full while pulling in a lesser salary.

Part of your focus today will be the Soldiers' and Sailors' Civil Relief Act of 1940 which anticipates some of the problems associated with a callup and attempts to soften the consequences. If you are a homeowner and are called to duty, it is possible for you to maintain your home for your family without fear of foreclosure during your time of duty and three months afterward. But if you are a renter you are afforded protection for three months under the Act and then only if your rent per month is below $150.

Mr. Chairman, in San Diego we have a successful program for the homeless that allows for what is called "single room occupancy" in renovated downtown hotels. The fair market rate for those single rooms is about $350 per month. A standard two-bedroom apartment in the same approximate area rents for $666 according to the San Diego Housing Commission. Yet the Soldiers' and Sailors' Civil Relief Act of 1940 offers protection from eviction for the family of a Reservist only if the rent is less than $150 per month. In San Diego a tent would rent for more.

I commend this Committee for taking a look at this obsolete legislation. It seems to me that if we are going to offer relief to the homeowner for the entire period of time while they are serving their country, we can offer that same relief to those who rent. I have introduced a bill that calls for that change to existing law. I believe it is a first step toward what you will do today in examining the 1940 Act.

In addition, I have heard from many Reservists who wonder why they do not qualify for the variable housing allowance that comes to their active duty counterparts.

To give you an example, there is a Reservist Hospitalman 2nd Class working at Balboa Naval Hospital. In civilian life he is a licensed physical therapy assistant. He took an immediate pay cut of $600 a month with the President's callup. But he also receives between $200 to $300 less than his active duty coworkers because they receive a variable housing allowance due to the high cost of living in the San Diego area.

Currently, the law allows a Reservist to collect a variable housing allowance only after 140 days of active duty. My legislation would allow the Reservist to collect a variable housing allowance, if it applies in his area, after 30 days on active duty at the call of the President.

The President has asked our Reservists to leave their jobs to serve side by side with our active duty personnel. Many will fulfill their duty to their country while neglecting their jobs, their families and other commitments.

I hope that, as you review pertinent legislation you will concur in the need to seek some relief for our Reservists. Our young men and women should not be penalized for answering the call to defend our nation.

I just returned from Saudi Arabia where the active duty troops were upset about the fact they are not receiving their separate ration allowance which reduces their family income anywhere from $80 to $180,-- and this is not being offset by combat pay. But that subject may be for another Committee hearing, unless, of course, we activate the Reservists.

Once again, I thank the Chairman and members for this opportunity to appear before you. I'll be happy to take any questions.

TESTIMONY OF
HONORABLE CHRISTOPHER JEHN
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT AND PERSONNEL)

AND

HONORABLE STEPHEN M. DUNCAN
ASSISTANT SECRETARY OF DEFENSE
(RESERVE AFFAIRS)

JOINT HEARING COMMITTEES
ON
VETERANS' AFFAIRS
UNITED STATES SENATE
HOUSE OF REPRESENTATIVES

THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT
50 USC APP. SECTION 501 ET SEQ.

SEPTEMBER 12, 1990

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CHRISTOPHER JEHN
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT AND PERSONNEL)

Christopher Jehn was sworn in as Assistant Secretary of Defense for Force Management and Personnel on November 20, 1989.

After serving on the faculties of The George Washington University and the University of Illinois - Chicago Circle, Mr. Jehn joined the research staff of the Center for Naval Analyses in 1972. He served at CNA in various capacities and was Vice President, Navy-Marine Corps Planning and Manpower Division before joining the Bush Administration.

Mr. Jehn was born and raised in Chicago, Illinois and currently resides in Falls Church, Virginia with his wife, Mary Ellen and daughter, Andrea. He holds a B.A. from Beloit College and an M.A. in Economics from the University of Chicago.

ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS

STEPHEN M. DUNCAN

Stephen M. Duncan was nominated by President Reagan to be Assistant Secretary of Defense for Reserve Affairs on August 7, 1987, and was confirmed by the United States Senate on October 23, 1987. He was reappointed to that office by President Bush on June 20, 1989.

As Assistant Secretary, Mr. Duncan serves as the principal staff assistant and advisor to the Secretary of Defense on all matters involving the 1.68 million members of the Reserve components of the U.S. Armed Forces, including the Army National Guard, Air National Guard, Army Reserve, Air Force Reserve, Naval Reserve, Marine Corps Reserve, and Coast Guard Reserve. He also serves separately as the Department of Defense Coordinator for Drug Enforcement Policy and Support. In that capacity, he acts as the principal assistant and advisor to the Secretary for all policies and programs of the Department of Defense in support of the President's crusade against illegal drugs. For his service as Assistant Secretary, he has received the Department of Defense Medal for Distinguished Public Service.

Mr. Duncan was born in Oklahoma City, Oklahoma, on March 28, 1941. He graduated from the U.S. Naval Academy in 1963, receiving his Bachelor of Science Degree and a commission as Ensign, U.S. Navy.

He served as a deck and watch officer aboard U.S.S. ESTES (AGC-12), an amphibious flagship which directed amphibious landings near Chu Lai, Vietnam in the Spring of 1965. He subsequently served as the Weapons Officer aboard U.S.S. CARRONADE (IFS-1), the flagship of a division of four rocket ships which provided close-in gunfire support to ground forces in Vietnam. His combat decorations include the Navy Commendation Medal (with Combat "V"), the Combat Action Ribbon, the Republic of Vietnam Cross of Gallantry (Bronze Star), the Navy Unit Commendation and various other unit citations and campaign medals related to his service in Vietnam.

In 1967, Mr. Duncan was appointed Assistant Professor of Naval Science at Dartmouth College, where he taught Naval Engineering and Naval History. He received his Master of Arts Degree in American Government from Dartmouth College in 1969.

Mr. Duncan transferred to the U.S. Naval Reserve in 1969. At the time of his first appointment in 1987, he held the rank of Captain, U.S. Naval Reserve. He is a recipient of the Armed Forces Reserve Medal.

Assistant Secretary Duncan attended the University of Colorado School of Law and received his Doctor of Jurisprudence Degree in 1971. He served as Assistant U.S. Attorney in 1972-73. From 1973 to 1987 he was engaged in the private practice of law in Denver, Colorado, most recently as a partner in the Denver firm of Hopper, Kanouff, Smith, Peryam, Terry and Duncan. His practice was concentrated in the trial and appeal of complex commercial disputes in both federal and state courts.

Mr. Duncan is a member of the Bar of the U.S. Supreme Court, the State of Colorado, the U.S. Court of Military Appeals and other federal courts. He is a member of the faculty of the Trial Advocacy Institute at the University of Virginia School of Law and in 1982 he was elected a Fellow of the International Society of Barristers. He has published articles in various professional journals. He has served as an elected member of the Board of Governors of the Colorado Bar Association and the Board of Trustees of the Denver Bar Association.

Assistant Secretary Duncan is married to the former Luella Rinehart of Santa Monica, California. They have two daughters. Kelly is a 1990 graduate of the U.S. Naval Academy and is serving on active duty with the Navy. Paige is a college student.

June 1990

Mr. Chairmen, we thank you for this opportunity to come before you this morning to discuss the Soldiers' and Sailors' Civil Relief Act, a law that has a major effect on the quality of life of our military personnel.

We would first like to recognize both of you, Mr. Chairmen, and the other members of Congress who joined you, for using part of your August recess to make the arduous trip to the Middle East to visit military men and women who have left their homes and families to serve their Nation--and the international community--in a very challenging and demanding mission. You recognize, as do we and as should every citizen of our Nation, the sacrifices that they are making. We deeply appreciate your gesture of respect for their efforts and we join them in thanking you for making the trip, and thus showing them by your action the gratitude of their Nation.

This morning we are joined by our colleagues from the Departments of Labor and Veterans Affairs. We will spend most of our time discussing the Soldiers' and Sailors' Civil Relief Act; we will also briefly discuss the Veterans' Reemployment Rights Law, but defer to our colleague from the Department of Labor for more extensive comment about that law.

We are sure that you noted the many Reservists who have responded to our Nation's call in this moment of crisis. On August 8, when the President announced that he had ordered U.S. military aircraft and troops to Saudi Arabia, Reserve volunteers were already participating in operational missions. By August 15, there were 8,094 volunteers. By the time of the President's call up of the Selected Reserve on August 22, no fewer than 11,418 Reserve volunteers were operating in support of DESERT SHIELD.

As a result of President Bush's authorization to order to active duty units and individual members of the Selected Reserve not assigned to units, the Army was authorized to call 25,000 personnel to active duty. The ceiling for the Navy was 6,300 members, for the Marine Corps 3,000, and for the Air Force 14,500. In addition, the Secretary of Transportation authorized the activation of 1,250 members of the Coast Guard Reserve. All reports indicate that the Reservists now serving on active duty are performing in a truly superb manner.

The Soldiers' and Sailors' Civil Relief Act (the Act) has been an essential ingredient in the total quality of life package for our military men and women, and their families, for 50 years. Whether they know its name or not, they use its provisions daily, in every duty station around the globe, to mitigate the disruption that military service unavoidably brings to their personal affairs. In fact, because some provisions of the Act are used so often, and so routinely, we sometimes take for granted this fundamentally important Act until dramatic events, such as those going on in the Middle East today, again bring it to the forefront.

During the Civil War, Congress had the foresight and concern to pass the first Act providing temporary relief from civil obligations for those serving the Union. World War I again brought relief from Congress. And, with the storm clouds of World War II gathering ominously on the horizon, Congress passed the current Act in 1940.

The rationale for all three laws was the same. Congress recognized that active military service caused severe, almost insurmountable, problems in handling personal affairs back home: frequent involuntary moves, extended deployments overseas, long separations from families sometimes with little advance notice. Congress also recognized the need to have military men and women focused on their operational mission free from worry about the welfare of their families or their personal affairs. How to address those problems adequately yet equitably was the congressional dilemma.

The solution selected in all three laws mirrors the Act we have today; a skillfully crafted balance among the needs of our Nation for a strong national defense, the needs of Service men and women--and their families--for security in their personal affairs, and the needs of those who have dealt with and depend upon Service members for fulfillment of their obligations.

Congress carefully struck the balance by adopting the following basic philosophy. The Act would:

o temporarily suspend, not extinguish,

o the civil, not criminal, obligations and liabilities

o of active duty men and women, not of retired members or of inactive reserves,

o when military service materially affected, not merely inconvenienced, the Service member's ability to carry out those obligations and liabilities.

This relatively simple, yet exceedingly fair, balance has stood the tests of use and time, proving the wisdom of the Congress in passing this Act.

The Military Services have overwhelmingly supported the various provisions of the Act for 50 years. Some provisions are used more than others, with the tax related provisions being in constant use. Yet, we cannot say that one provision is more important than another for all have been used, and for the Service member who uses a specific provision at a certain time, that specific provision is truly the most important of all.

We'll now describe a few key provisions of the Act because such an overview provides a useful vehicle for understanding the Act's scope, the careful balancing of interests that the Act makes, and our thoughts on some minor amendments that would bring important clarity to certain provisions.

Five key provisions are among the most commonly used, and most important, in the Act. They deal with such varying topics as default judgments and evictions. They are:

o Leases/Rents. What does a new Service member do about longterm leases/rental agreements entered into while the Service member was not on active duty? The Act permits the Service member to end leases used for many different purposes, including for dwelling, professional, business, and agricultural purposes. The Service member must give written notice and pay rent until the lease ends. The Act legislates the day when the lease terminates, and in every case it terminates no longer than 60 days after notice.

o Interest Rates. What can new Service members do who can meet their financial obligations on their civilian pay, but cannot on their reduced military pay? The Act sets a maximum interest rate of 6 percent for all financial obligations entered into before entering active duty. The 6 percent rate lasts until the Service member leaves active duty. We advise our Service members to notify their creditors of their active service if they qualify for this reduced interest rate. The reduced interest rate is only for those

Service members whose ability to meet their financial obligations has been materially affected by going on active duty.

o Foreclosure/Repossession. May a creditor foreclose on a Service member's mortgage or repossess a Service member's property bought on an installment contract if the Service member falls behind on required payments? The Act prohibits such foreclosure or repossession if the mortgage/installment contract originated before the Service member began active duty, the Service member still owns the property in question, and the Service member's ability to make required payments is materially affected by serving on active duty.

o Evictions. May a landlord evict a Service member on active duty, or the Service member's family, if the Service member falls behind on rental payments? The Act allows the landlord to evict, if the rent is more than $150.00 per month. If the rent is $150.00 per month or less, the landlord may evict only after obtaining a court order. In such a case, the judge must determine if serving on active duty materially affected the Service member's ability to make the required rental payments. If active service did materially affect the ability to pay rent, then the judge may delay the eviction for no longer than 3 months, or issue any other order deemed just. At least one court applied this provision in 1984 to a rent exceeding $150 (the rent was $340), adjusting the $150 figure for inflation in order to give effect to the apparent intent of Congress.

o Default Judgment/Stay of Proceedings. What can Service members on active duty do about civil court proceedings they

> are involved in when they are stationed far from the court house? The Act provides a number of remedies. It allows a stay or delay of the proceedings until at least 60 days after the Service member leaves active duty if military service materially affects the Service member's ability to participate in the proceedings. The Act also provides a number of procedural protections to guard against unfair default judgments. Finally, the Act permits the reopening of any default judgment that was not conducted in accordance with the terms of the Act.

The Act is of fundamental importance to the Department of Defense. For 50 years, it has been a cornerstone of the quality of life enjoyed by military men and women, and their families. It is used daily, around the globe, in a wide variety of situations of varying complexity and scope. It is vitally important to all on active duty.

As important as the Act is to those who voluntarily choose to enter active service, it is perhaps even more important to those who stand by to serve at the call of the President or Congress. They may have little opportunity to settle their personal affairs before entering active service, and their call up often portends immediate deployment to a remote, and potentially hostile, locale. They need a strong Act to rely on.

Those recently called up by the President for service in connection with operations in and around the Arabian Peninsula are a good example, but in some ways a relatively easy one as we will explain later. They are asking many questions about how the Act affects their personal situations, indicating that many of them will make use of one or more of its provisions. Those questions show that the training they have received has been successful in making them aware of what the Act is, how it might affect them, and how to get situation specific advice from military legal assistance officers when needed. We offer a few examples of that training for your information.

As in the case with members of the active components, Reservists receive information on their entitlements and legal protections during basic training. National Guard and Reserve units supplement and reinforce this initial training by providing premobilization handbooks to their members. Formal annual training programs update and further reinforce this information.

In the Army, for example, this training is an integral part of Forces Command's Mobilization and Deployment Planning System. Legal counseling is an important part of this system, provided in accordance with the Army's Family Assistance Handbook for Mobilization and the Premobilization Legal Counseling Program. At a minimum, this counseling must encompass the following topics: (1) organization of legal affairs, (2) estate planning, (3) wills, (4) guardianship of minor children, (5) powers of attorney, (6) protection provided by the Soldiers' and Sailors' Civil Relief Act, and (7) reemployment rights.

Today, Reservists ordered to active duty in support of Operation DESERT SHIELD are briefed and provided additional materials and assistance. In the Air National Guard, for instance, a team has been established to brief all participating units. In all Services, Active component family centers and legal assistance offices also provide information on Reserve entitlements and issues.

The Office of the Secretary of Defense has prepared a guide for Reserve component families affected by the current situation.

This guide includes a letter from Secretary Cheney to the Reserve families, expressing his appreciation for their commitment and daily contribution to the ultimate success of our Armed Forces. The guide includes important information on compensation, medical care, available services at military installations, family assistance, legal assistance, the Soldiers' and Sailors' Civil Relief Act, civilian reemployment rights, and other matters of concern to Reservists and their families. It includes an extensive list of DoD family program coordinators and private associations and organizations which can provide assistance to Reserve families.

As difficult as the current situation may be for our Selected Reservists, this situation is relatively easy compared to what may occur under a mobilization. Those recently called up are members of the Selected Reserve; they are well prepared for a call up, they have been educated in the requirements that a call up brings to personal affairs, and they are familiar with military life. A mobilization would bring in a much different group of citizens, less familiar with military life, less educated in the requirements that a mobilization would place on personal affairs, and less prepared for mobilization. For them, the Act would be of even more urgent importance.

The Act is not perfect and some provisions may need to be updated. But, as we've repeated because it's such an important point, the Act works exceedingly well. We should, therefore, proceed with great caution as we work to ensure that what changes we propose fit well within the Act's careful balance.

So far, we've received no reports of problems under the Act from those Selected Reservists being called to active duty. But many won't use most of the provisions of the Act for some time, so it's far too early for us to pass definitive judgment on how helpful it will prove to be to them. We may later learn that certain changes would be beneficial; we've not learned that yet. However, our daily experience with the Act over the years has identified a need to address a number of areas. They are:

- Default Judgment (50 USC App Section 520). This section sets forth certain rules that must be followed before a default judgment may be entered against a Service member in military service. In order to trigger this section, there must not be an appearance by the Service member before the court. If there is an appearance, the court may enter judgment on the merits, and the Service member loses the Act's default judgment protections. The technical issue needing clarification is whether a letter from the Service member or the member's legal assistance attorney to the court may be considered as an appearance. At least one court has so held. Our reading of congressional intent indicates that Congress did not intend such a result. While courts should retain broad discretion to decide when an appearance occurs, a letter from a Service member or the member's legal assistance attorney indicating the member's military status and requesting protection under this Act should not be considered an appearance to the detriment of the military member. We are working on a proposed amendment to the Act to clarify this point.

- Stay of Court Proceedings (50 USC App Section 521). This section sets forth certain rules regarding stays of court proceedings for Service members while in military service.

As in the default judgment section we just discussed, the issue needing clarification here is whether a letter from a Service member or the member's legal assistance attorney notifying the court of the member's military service and requesting the protections of this Act should be considered an appearance by the court. Our judgment is that Congress did not intend this result, and we are working on an amendment similar to that for the default judgment section to clarify this point.

In addition to reviewing possible amendments to those four sections of the Act, Selected Reservists called up to assist operations in and around the Arabian Peninsula have identified other concerns that are not covered by the Act. They are:

o Malpractice Insurance. An increasingly prominent form of malpractice insurance, "claims-made" insurance, covers only those claims filed during the policy period. Thus, Service members who have "claims-made" insurance, and about half of all civilian physicians do, must maintain that coverage while in military service. Their problem is that malpractice rates for some professions have risen so high that they exceed the pay and allowances that members of those professions receive while in military service. They simply can't afford the insurance they must have. We are preparing legislation to address this problem. It is imperative that we find a satisfactory means of dealing with this matter. The consequence of not doing so would be to risk the very significant gains which the Department has made in reducing our wartime shortfalls in physicians and other key health care personnel.

o Tuition Reimbursement. Some of the Selected Reservists called to active duty had paid tuition for the fall semester of school. They will not be able to attend school, and the school will have a vacancy it may not be able to fill. We are actively negotiating with one group of colleges in an effort to reach some mutually agreeable solution to this problem. We are also considering whether proposing legislation is necessary to resolve these this problem.

Two other areas that we are looking at in light of changes over the past 50 years are:

o Eviction Protection (50 USC App Section 530). This section provides protections against eviction of Service members, or their families, if the agreed upon rent is $150 or less. Originally, the Act used an $80 limitation. In 1966, Congress raised the limitation to the current $150 figure. Obviously, inflation has seriously affected the usefulness of that figure in today's rental market. In fact, one court has held that the Act covered a $340 rent, adjusting the $150 figure for inflation in order to give effect to congressional intent. We are working on an amendment to bring that figure up to date to reflect changing housing market conditions.

o Maximum Interest Rate (50 USC App Section 526). This section establishes a maximum rate of interest of 6 percent for all obligations and liabilities of a Service member, as long as they were undertaken before entering military service, and as long as the Service member's ability to pay a higher interest rate is materially affected by military service. Questions have arisen concerning the 6 percent interest rate. For example, is the unpaid interest forgiven or merely postponed until after completion of military service. We understand that the Congressional Research Service concluded in a memorandum of August 27 that congressional intent was to have the excess interest permanently forgiven.

Whether the 6 percent interest rate is compound or simple interest is also not addressed in current law.

Third, current law fails to provide credit protection for those who use it. In fact, the entire Act fails to provide credit protection for those who take advantage of its provisions. While this is not surprising since the Act was drafted at a time when credit use and credit protection received far less attention than today. Service members should not suffer any damage to their credit standing, of any type, merely for asserting rights bestowed by Congress in this Act.

Finally, there is some concern as to the appropriateness of a 6 percent cap, which was established in 1942, at a time when mortgage rates were about 4 to 5 percent and the prime lending rate was 1.5 percent. Obviously, interest rates were significantly lower than they are today. We will study this issue to determine if the interest rate cap should be changed to provide the intended protection within the context of current market conditions, along with studying the other issues related to the 6 percent rate.

In summary, the Soldiers' and Sailors' Civil Relief Act is a vitally important law that is an essential ingredient of the quality of life that our Service men and women, and their families, enjoy. Its importance is highlighted when Selected Reservists are called up, and would become even more evident in the event of mobilization. But that does not mean that the Act is not important in more peaceful times as well. Military personnel and their families depend upon its provision to some extent every day in a wide variety of settings all over the world. The Act rather nicely demonstrates the ability of Congress to skillfully balance different interests; it should only be amended when compelling need requires, and then only after careful thought. We are considering legislation to make amendments that are needed to clarify the Act. We ask that you give them careful consideration.

Although our colleague from the Department of Labor will address the Veterans' Reemployment Rights Law (the VRRL) in some detail, because the VRRL protects Service members and is of vital importance to Reservists, we offer the following comments:

Over 80 percent of the enlisted members of the Selected Reserve and nearly 90 percent of the officers are employed in the civilian sector. The statutory employment rights set out in the VRRL provide a basic set of rights for those Reservists with respect to both their current and prospective employers, and set a clear minimum standard for employer conduct with respect to them.

However, certain provisions of the VRRL require clarification, and we have participated in an Interagency Committee with the Departments of Labor, Justice, and Veterans Affairs to develop a comprehensive legislative proposal to revise and update the VRRL. The Department of Defense strongly supports this legislative proposal which is now being coordinated within the Administration.

One particular clarification bears mentioning. The VRRL is clear that Reservists called to active duty under section 673b of Title 10 for not more than 90 days have reemployment protection under section 2024(g) of Title 38. Thus, the VRRL covers those Selected Reservists currently called up to support Operation DESERT SHIELD.

The VRRL does not specifically address those Reservists who may be called up for a period of not more than 90 days and then extended on active duty by the President for an additional period of not more than 90 days. By implication, they remain covered by the VRRL. However, in order to avoid possible misinterpretation, we recommend that section 2024(g) of Title 38 be amended to specifically include those Reservists who may be extended on active duty by the President. Our colleagues from the Department of Labor will address the VRRL in more detail.

The Veterans' Reemployment Rights Law and the Soldiers' and Sailors' Civil Relief Act are important benefits that truly make a difference to our Service men and women. We appreciate this opportunity to address these laws with you.

STATEMENT OF
ANTHONY J. PRINCIPI
DEPUTY SECRETARY
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
COMMITTEES ON VETERANS' AFFAIRS
SEPTEMBER 12, 1990

Mr. Chairman Cranston, Mr. Chairman Montgomery, Members of the Committees:

I am pleased to be here today to present the views of the Department of Veterans Affairs (VA) concerning The Soldiers' and Sailors' Civil Relief Act (SSCRA). We have examined this area as a result of the recent activation of a number of Guard and Reserve units in support of Operation Desert Shield.

OVERVIEW OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Congress passed the SSCRA in 1940 contemplating the possibility of war and recognizing that it would be difficult for servicemembers to devote time to personal financial obligations which might require them to defend actions initiated in their absence.

VA strongly supports the primary purpose of the SSCRA, which we view as ensuring that servicemembers serving on active duty are not placed at a disadvantage in legal, personal or financial matters because of their status and location due to military orders. Active-duty personnel, including reservists called up in response to the current crisis, make up the next generation of veterans and deserve every protection and benefit afforded by law.

It is important to realize that the SSCRA generally does not cancel the servicemember's obligations. The servicemember's obligation to honor debts still exists; only the time period for payment is extended. Likewise, the SSCRA affords protection to the servicemember and his family from foreclosure on their home, repossession and sale of belongings, the entry of default judgments, and, to a lesser extent, eviction from their dwelling place (current law limits the prohibition on eviction to dwelling places renting for $150/month or less).

The SSCRA also permits the servicemember to terminate lease agreements and meet obligations under an assigned life insurance contract, and provides protection through VA (limited to $10,000) from the lapse of a life insurance policy. With the approval of a court, a servicemember's dependents may also be entitled to relief from foreclosure, repossession and eviction.

Of particular significance to the servicemember, and the member's creditors, is the SSCRA's limitation of the amount of interest payable on obligations and liabilities incurred prior to entering service. VA has received numerous inquiries from private citizens, corporations, other government agencies and veterans concerning the interest-rate limitation provision of the SSCRA; we have attempted to provide responsive answers to each inquiry.

We must note, however, that neither VA nor any other Federal agency has authority to interpret or enforce the loan provisions of the SSCRA. Therefore we have had to qualify our answers by noting they represent only our interpretation, and lack any weight that might normally attach to guidance provided by an enforcement authority.

Certain provisions of SSCRA apply only when the servicemember's ability to make payments or comply with other obligations is "materially affected by service." For example, only those servicemembers who suffer a financial detriment due to a reduction of their earning ability, resulting from active service, are eligible for the interest-rate limitation on financial obligations. While the courts have ultimate authority concerning whether an individual meets the requirements of the SSCRA, we believe that the "material effect" requirement does provide an avenue for the creditor to challenge the protections the SSCRA provides an individual servicemember.

VA'S Response to Current Middle East Operations

While the Soldiers' and Sailors' Civil Relief Act has been standing legislation since 1940, an understandable resurgence of interest about the Act and its potential application has occurred with the situation involving the Middle East.

As we observed the situation reach its critical stage, the VA began its own assessment of contingency plans associated with both health care and benefits delivery. Our significant role under Public Law 97-174, the VA and DOD Health Resources Sharing and Emergency Operation Act, has been thoroughly reviewed and we stand ready to serve as the primary contingency back-up to the Department of Defense in an emergency involving our Armed Forces. Your staffs were recently provided a full briefing on this contingency planning.

Likewise, the benefits-delivery structure could be substantially impacted by combat operations. The specific relevance of and impact on disability compensation, education programs including Vocational Rehabilitation, loan guaranty, and insurance have been analyzed. Our public service and administrative responsibilities in areas of casualty assistance, aid to combat-injured patients and overall information dissemination are fully understood.

We recognize an affirmative duty to support the Department of Defense and the active forces with information and, where applicable, claims assistance during this period. This applies to benefits programs which we administer and equally applies to those provisions of the Soldiers' and Sailors' Civil Relief Act associated with our programs. Detailed information on potential benefits impact has been dispatched to our Veterans Services Program, Loan Guaranty Program, and program participants throughout the regional office system.

The Executive Order calling Reserve and National Guard units to active duty has stimulated interest in the provisions of the SSCRA and prompted the VA to take a close look at those provisions and our role in carrying out the Act. We recognize that the primary responsibility for notifying servicemembers of the protections of the SSCRA falls on the Department of Defense (DOD). However, as you know, in a specific sense the Act involves VA in the areas of loan guaranty and insurance.

SSCRA and Loan Obligations

All loan obligations are affected by the Act, including VA-guaranteed home loans. Section 206 of the Act provides that no obligation incurred prior to an individual's entry into military service shall bear interest at a rate in excess of 6 percent per annum during the period of military service, if the ability to meet financial obligations has been materially affected by going on active duty. The lender can apply to a court for a higher rate of interest based on the individual's ability to pay. Section 302 of the Act requires court approval to foreclose a mortgage.

Section 700 of the Act authorizes a person in military service to apply to a court for further relief from a mortgage obligation and authorizes the court to stay enforcement of the mortgage obligation during the period of military service.

The issue of redemption periods appears to require clarification. The law presently extends any redemption period for as long as the veteran remains on active duty, which can be for a number of years. This provision could hinder the ability of parties holding title to properties subject to a right of redemption to dispose of the property, create great uncertainty in land titles and lead to unfair results.

Additionally, a question may arise as to the applicability of the 6-percent interest rate to persons other than the spouse of a servicemember who may be jointly liable on a loan.

We also note that Section 300 of the Act is intended to provide relief to the spouse, children or other dependents of a person in military service who are living in rental property. This section prohibits eviction during the period of service with respect to such premises except with court permission. The court is given broad powers if it finds the tenant's ability to pay the rent has been materially affected by military service. The court may postpone the eviction proceedings for up to 3 months, or make other judicial disposition.

These protections will apply, however, only if the agreed rent does not exceed $150 per month, a figure unchanged since 1966. It is unlikely that many families would actually qualify for the protection of this provision in view of rental prices in today's market.

Life-Insurance Protections

The one provision of the Act which VA is charged with administering is Article IV pertaining to commercial life insurance policies. Although the current insurance provisions of the Act have remained in effect since 1958, there have been very few requests for the insurance protection provided by the Act over the last 20 years. For example, we processed only nine 9 applications for coverage in 1972, three applications in 1973 and one application in 1974, which represented the last application the Department processed. The last payment we made to a commercial insurance company under the terms of the Act was in 1984 as the result of an application made for coverage in January 1963.

We believe there are several reasons why applications for this coverage have diminished over the past 20 to 30 years. The original intent of the Act was to provide individuals summoned to active duty a guarantee that their commercial insurance coverage would not lapse for nonpayment while serving on active duty. We believe the legislation was useful in the 1940's and 1950's, but has become less of a benefit for those serving in the Armed Forces today, since the amounts of insurance and types of coverage have changed significantly in the intervening years. For example, the average American household had $3,960 in insurance coverage in force in 1940. The individually owned plans of insurance in effect at the time were relatively expensive and would have been very difficult to afford on a servicemember's limited salary. Also, in the 1940's few individuals were covered by group policies and, therefore, were not receiving the benefit of relatively inexpensive group coverage which is available today. For example, there were only 9 million Americans covered by group plans in 1940. By comparison, 138 million Americans are insured under group plans today, for an average household coverage of $108,200.

The only insurance benefit provided by the Act is that premium payments may be deferred for up to two years after service when all premiums, plus interest, are due in order to keep the policy in force. This post-service, lump-sum payment often presented, and continues to present, a very difficult financial burden on the individual veteran. In the event of the policyholder's death during the deferment period, premiums and interest are deducted from the amount paid to the beneficiary. If the insured does not pay the premiums at the end of the two year post-separation period, the VA is responsible for paying any unpaid premiums to the insurance company less any credits that have accumulated on the account such as dividends. We must also establish an accounts receivable against the individual insured for any amount paid on his or her behalf. According to the provisions of Public Law 94-378, enacted August 9, 1976, unpaid premiums underwritten by the United States Government are to be funded through the Compensation and Pension Fund.

Among the current limitations of the Act as it relates to insurance is the fact that it does not extend to any current group coverage that is in effect. To be eligible for protection under the Act any group coverage would have to be converted to an individual policy. In addition, the protection is limited to $10,000. If an individual has a policy larger than $10,000, the insurance company would be required to split the coverage into two policies so that the policy protected under the Act does not exceed the $10,000 limit. Protection under the Act is also precluded for policies that provide a "war clause" which excludes coverage for deaths due to war or hostilities.

Since the inception of the Act in 1940, insurance coverage for active-duty personnel and reservists has been increased from the $10,000 ceiling established under the National Service Life Insurance Program to the $50,000 in coverage that is provided through the Servicemen's Group Life Insurance Program. The Department of Defense is currently conducting a study with the assistance of our Insurance Service on the adequacy of the SGLI coverage for members of the uniformed services. This study was initiated at the request of the Senate Armed Services Committee. It may be more appropriate to address the insurance needs of all servicemen and women as part of the current review of the SGLI program rather than attempting to amend the Act, which has benefited only a very limited group of individuals.

STATEMENT OF
THOMAS E. COLLINS
ASSISTANT SECRETARY FOR
VETERANS' EMPLOYMENT AND TRAINING
BEFORE THE
JOINT HOUSE AND SENATE COMMITTEES ON VETERANS' AFFAIRS
HEARING ON

SEPTEMBER 12, 1990

Mr. Chairmen and Distinguished Members:

Thank you for the opportunity to appear today. I certainly share your Committees' timely interest in the Veterans' Reemployment Rights program.

As I am sure you already know, Operation Desert Shield has heightened the American public's awareness of this program's importance in support of the Total Force concept now being put to the test in the Middle East. The President's mobilization of Reserve components, unprecedented since the Vietnam Era, has produced a flood of inquiries from reservists and their dependents, employers and the media. I am proud to say that I think that the Department's Office of the Solicitor, Office of Information and Public Affairs, and my agency, the Veterans' Employment and Training Service, have responded very well to the unusual demands generated by the military response to Iraq's aggression in the Persian Gulf area.

Since the call-up of the reserve forces on August 22, we have responded to approximately 3,500 inquiries nationwide. The inquiries range from basic questions about what reemployment rights are protected to very specific questions about such things as health insurance coverage for dependents while the reservist is on duty.

We have worked closely with the Department of Defense's Office of Reserve Affairs, the National Committee for Employer Support of the Guard and Reserve, and the Department of Labor's Solicitor to develop public information materials containing accurate responses to technical questions regarding benefits and coverage, and to coordinate their dissemination. We have issued a news release nationally, a field memorandum, and had a lengthy technical article published by the Commerce Clearing House Human Resource Management service, a publication that reaches thousands of personnel administrators. I have personally given interviews to television, radio, wire service and individual newspaper media, and the field staff of the Veterans' Employment and Training Service has also been active in that regard.

I am especially proud of the reaction of the nation's employers, both private and public sector, to the current active duty of reserve forces. Many private sector employers are giving "bonus" or "voluntary" compensation and health care benefits to their employees called to active duty in forms such as differential pay and voluntary continuation on health care and insurance plans. There is a much improved understanding and spirit of cooperation with public employers. The Office of Personnel Management is taking the initiative in interpreting and communicating reserve member employment rights to Federal agencies and we are making efforts to achieve this same spirit of cooperation with State and local government employers. A great variety of businesses and government agencies are impacted and I am happy that most are understanding legally-required reemployment rights and many are going beyond the minimum requirements. My own National Office has been impacted by the mobilization with several key staff members now on active duty, which gives us first hand experience with the situation and the employee/employer relationships involved.

As you already know, the reemployment rights statute is complex. It came into being as one of the features of the Selective Training and Service Act of 1940, and has been amended several times to extend reemployment rights to enlistees or inductees and to reservists returning from basic and training duty. There have been hundreds of Federal case decisions, including several Supreme Court decisions, on reemployment rights cases in the 50 year life span of the law, and thus each new complaint or inquiry received must be considered not only in light of what Chapter 43 of Title 38, United States Code, states, but also in light of the interpretations of the provisions of the Code that have been set forth in those court decisions.

The Veterans' Employment and Training Service, which has been responsible for the program since 1983, has provided training at the National Veterans' Training Institute to all of its field staff to ensure that everyone who might receive an inquiry regarding the program is trained to respond according to the procedures set forth in the agency's recently revised operations manual. Several months ago we implemented a reorganization of the National Office that re-established a distinct Division of Veterans' Reemployment Rights, to ensure that the program maintains a visibility commensurate with its importance to our nation's security.

I want to ensure that we continue to improve the productivity of the program for our clients. We stress to the agency's field staff the importance of mediation and conciliation approaches to amicably resolve cases as soon as possible, and we have been achieving success. In FY 1989, we resolved 1,432 cases, 96% of them without referring them to the Department of Justice for litigation.

We are also continuing to improve our case processing time. In FY 1987, the average case took 126 days to bring to resolution. By continually placing higher expectations on our field staff, continuing our emphasis on in-service training and involving more of the staff in case resolution activities, we have brought the processing time down to 42 days. We have maintained quality standards by institution of routine quality assurance reviews of all cases at the Regional level.

While I think we have reasons to be proud of our accomplishments, I am concerned about the future. The volume of inquiries we and other agencies received as a result of the Reserve call-up clearly indicated there is a vast gulf of ignorance and misunderstanding within our country about reemployment rights of veterans, reservists and Guard members. Furthermore, the complexity of the current statute makes it difficult to answer simply what may appear to be a simple question. While we will continue to work closely with the Department of Defense and through the media to disseminate fact sheets and other public information materials, it is questionable how effective we will be in preventing inquiries from becoming complaints due to the complexity of explaining the current statute. It may also be that we are approaching the point where we cannot achieve further improvements in productivity without sacrificing quality, because the ability to settle cases quickly is related to the degree of difficulty in getting both the employer and the reservist to understand what the law requires.

I am also concerned about the impact that changes going on in the workplace will have on our ability to protect our clients' rights. For example, we are seeing changes in benefits packages offered by employers to employees, including increasing varieties of employee benefits and health insurance offerings. Because of the novelty and complexity of benefits-related issues, it seems highly probable that a growing proportion of the cases we cannot resolve and must refer to the Department of Justice for resolution through litigation will be benefits-related cases. Litigation is a time-consuming, expensive process, as anyone who has been through it knows.

In order for a case to be referred for litigation, the claimant must make an initial request for litigation to VETS. Normally this occurs after VETS has investigated the case, and attempted unsuccessfully to conciliate the matter with the employer. Upon receipt of the written request for litigation, VETS' field staff then prepare a memorandum of referral. Essentially, this is a factual history of the case, summarizing the legal issues and VETS' recommendation for resolution. The case is next transmitted through the Regional Office to the Department of Labor's Regional Solicitor's Office for review, from which it is finally referred to the Department of Justice. I might point out that, while litigation may not result in a speedy disposition of VRR cases, it certainly is a necessary process --both to provide ongoing interpretation of the law and to serve as a sufficient deterrent to encourage voluntary conciliation.

Because of my concerns, I have followed through on efforts begun three years ago by an Interagency Task Force that made recommendations for clarifying and simplifying the existing law and streamlining the administrative processes for resolving cases. We are working on a legislative proposal addressing those Task Force recommendations.

This proposed legislation would make the statute more understandable, as it would describe specific responsibilities of employers instead of using broad language subject to differing court interpretations. Also, we would have the authority to issue regulations and thereby clarify provisions of the law through the public rulemaking process. It would eliminate the current confusing distinctions among categories of military training or service; under our bill entitlements and eligibility would depend simply upon the duration of service. It would clarify protections for Federal employees by giving the Merit Systems Protection Board explicit authority to adjudicate Federal worker claims. All in all, I think we are developing a bill that is good for our military men and women, good for public and private sector employers, and good for those in the executive branch who must provide the services required.

You may expect us to continue our emphases on coordination and cooperation with other agencies, on the dissemination of vital information, and timely resolution of cases.

I thank you again for the opportunity to discuss the Reemployment Rights program with you and I would be pleased to answer any questions you may have.

STATEMENT OF REPRESENTATIVE BENJAMIN A. GILMAN REGARDING THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

SEPTEMBER 12, 1990

THANK YOU FOR THE OPPORTUNITY TO TESTIFY BEFORE THE COMMITTEE ON VETERANS AFFAIRS TODAY. I WOULD ALSO LIKE TO THANK THE CHAIRMAN, MR. MONTGOMERY AND THE RANKING MINORITY MEMBER, MR. STUMP FOR HAVING A HEARING ON SUCH AN IMPORTANT ISSUE AS THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT.

YESTERDAY, I INTRODUCED H.R. 5569, LEGISLATION AMENDING THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO ENHANCE THE PROTECTION FOR MEMBERS OF THE ARMED FORCES ON ACTIVE DUTY, INCLUDING MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES.

WHEN A RESERVIST IS CALLED INTO ACTIVE DUTY, HIS EARNINGS MAY BE REDUCED BY A CONSIDERABLE AMOUNT. AS A RESULT, THE RESERVIST MAY NOT BE ABLE TO MEET HIS CAR, MORTGAGE, OR PERSONAL LOAN PAYMENTS.

MANY YEARS AGO, CONGRESS ENACTED THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO PROTECT THE RESERVISTS' INTERESTS WHEN THEY WERE CALLED INTO ACTIVE DUTY.

THE ONE AREA CONGRESS OVERLOOKED WAS RENT. CONGRESS DID INCLUDE A PROVISION UNDER THE HOUSING SECTION OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940, TO PROTECT INDIVIDUALS FROM BEING EVICTED.

THE CURRENT LEGISLATION PROTECTS THE RESERVISTS DEPENDENTS FROM BEING EVICTED AS LONG AS THE RENT DOES NOT EXCEED $150 PER MONTH, AND THE LANDLORD CAN EVICT THE DEPENDENTS WITHIN THREE MONTHS.

MY LEGISLATION WOULD ADJUST THE $150 RENT CEILING UPWARD TO $600, AND ON DECEMBER 1 OF EACH YEAR, THE RENT LIMITATION WILL BE INCREASED BY THE SAME PERCENT AS THE RETIRED PAY OF A MEMBER OR FORMER MEMBER OF THE ARMED FORCES.

ADDITIONALLY, THE LANDLORD WILL NOT BE ABLE TO EVICT THE RESERVIST AND HIS FAMILY WITHIN THE THREE MONTHS THAT IS STATED IN THE CURRENT LEGISLATION.

UNDER THE PRESENT LAWS, RESERVISTS ARE EXPERIENCING DIFFICULTY IN MEETING HIGH RENT PAYMENTS.

TAKE FOR EXAMPLE A RESERVIST WHO IS MAKING $50,000 A YEAR, HAS A WIFE AND THREE CHILDREN. WHEN THAT RESERVIST IS CALLED INTO ACTIVE DUTY HIS SALARY CAN BE REDUCED BY UP TO FIFTY PERCENT. HOW IS HE GOING TO CONTINUE PAYING HIS RENT AND SUPPORTING HIS FAMILY WHILE HE IS ON ACTIVE DUTY?

MY LEGISLATION, THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AMENDMENTS OF 1990 PROTECTS RESERVISTS WHO CANNOT MAKE THE HIGH RENT PAYMENTS BY PLACING A STAY ON THEIR LEASE, AS LONG AS THE RESERVIST IS IN ACTIVE DUTY FOR MORE THAN 30 DAYS.

DURING THE PERIOD THAT A STAY IS PLACED UPON THE LEASE, THE RESERVIST WILL PAY AN AMOUNT AGREED UPON BY THE RESERVIST AND THE LANDLORD, THAT WILL CORRESPOND WITH THE SUM OF ANY BASIC ALLOWANCE FOR QUARTERS AND VARIABLE HOUSING ALLOWANCE TO WHICH THE RESERVIST IS ENTITLED TO WHILE HE IS IN ACTIVE DUTY.

THE AMOUNT OF AGREED RENT THAT IS UNPAID DURING THE PERIOD OF ACTIVE DUTY WILL BEAR INTEREST AT A RATE OF SIX PERCENT AND WILL BE REPAID IN EQUAL MONTHLY INSTALLMENTS, BEGINNING ONE MONTH AFTER THE TERMINATION OF THE PERIOD OF ACTIVE DUTY. THE UNPAID RENT WILL BE PAID OVER A PERIOD EQUAL TO FOUR TIMES THE NUMBER OF MONTHS THE RESERVIST WAS IN ACTIVE DUTY.

MR. CHAIRMAN AND MY COLLEAGUES, I WANT TO TOUCH ON ONE MORE ITEM BEFORE I LEAVE YOU THIS MORNING. LATER TODAY THE POST OFFICE AND CIVIL SERVICE COMMITTEE, ON WHICH I SERVE AS THE RANKING MINORITY MEMBER WILL BE HOLDING A HEARING ON LEGISLATION, H.R. 5563, TO PROVIDE OUR MILITARY PERSONNEL IN THE MIDDLE EAST WITH MAILING PRIVILEGES THAT WILL ALLOW THEM TO CORRESPOND WITH FAMILY AND FRIENDS HERE IN THE STATES FREE OF CHARGE.

AS MY COLLEAGUES MAY BE AWARE, SIMILAR LEGISLATION IN THE FORM OF AN AMENDMENT WAS OFFERED AND ADOPTED, IN THE SENATE ON MONDAY EVENING TO H.R. 5241, THE TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS BILL.

PRESENT STATUTES ALLOW THIS PRIVILEGE WHEN TROOPS ARE IN AN ACTUAL STATE OF WAR, HOWEVER, IT DOES NOT ADDRESS THE SITUATION THAT WE HAVE NOW WITH SO MANY OF OUR MEN AND WOMEN BEING DEPLOYED ON FOREIGN SOIL FOR WHAT WE HOPE WILL NOT BE, BUT CERTAINLY COULD BE, A RATHER LONG TIME WITHOUT AN ACTUAL DECLARATION OF WAR.

I WAS PLEASED TO JOIN WITH THE CHAIRMAN OF THE FULL COMMITTEE, BILL FORD AND THE CHAIRMAN OF OUR SUBCOMMITTEE ON POSTAL OPERATIONS AND SERVICES, FRANK MCCLOSKEY, IN INTRODUCING THIS BILL AND IT IS OUR INTENTION TO PLACE THIS BILL BEFORE THE HOUSE AS EARLY AS NEXT MONDAY ON THE SUSPENSION CALENDAR. IT IS MY WISH THAT THIS RELATIVELY SMALL EFFORT WILL SERVE TO LIGHTEN THEIR LOADS AND SPIRITS WHILE THEY AWAIT THE OUTCOME OF THIS CONFRONTATION SO FAR FROM THEIR HOMES.

PERMIT ME ONCE AGAIN TO EXPRESS MY APPRECIATION FOR THE CHANCE TO TESTIFY BEFORE YOU TODAY.

STATEMENT OF

SENATOR FRANK H. MURKOWSKI (R-AK)

Good Morning,

Last August, one of the most important items on the agenda of the Committees on Veterans' Affairs was providing for the needs of the hundreds of thousands of servicemembers anticipating early discharge as the Congress pursued a "peace dividend".

This September we face an entirely different situation. The ranks of Committee staff arrayed to our rear are short one person. One of the House Committee staff is on active Naval service. She was called into uniform as the Nation responded to naked aggression in the Persian Gulf. My staff director, Al Ptak, is subject to the same call.

The integration of our reserve and regular military forces into one "total force" means that Reserve and National Guard personnel must be involved in military operations much sooner than a reserve call up would have heralded only a few decades ago. This makes it even more important that programs to protect members of the armed forces also be effective for members of the reserves.

I am proud of the spirit and professionalism displayed by the men and women of our armed forces as they respond to the unexpected crisis in the Middle East. They demonstrated flexibility and skill in facing the unexpected challenge presented to them.

However, the Congress must also confront an unexpected challenge as a result of their deployment. We must ensure that the protections enacted a half century ago to protect the financial interests of Americans called into uniform will still do the job intended. The men and women we sent to the Middle East know their lives are at risk. We must ensure that their personal finances are not unduly placed at risk because they have answered the Nation's call to arms.

The Congress has enacted two primary protections for men and women who go on active military duty: Deferral of adverse civil and credit actions until active duty is complete and assurance that the jobs they leave will still be available when they return.

I have no doubt that the Congress will continue to endorse the spirit of these protections. I look forward to hearing suggestions for adapting them to the world of the 1990's.

A Statement to a Joint Hearing of
The Committees on Veterans' Affairs

United States Senate
and
United States House of Representatives

12 September 1990

Mr. Chairmen and Members of the Committee:

It is a pleasure for me to provide you the views of the Association of the United States Army (AUSA) on changes to the Soldiers' and Sailors' Civil Relief Act (SSCRA).

AUSA believes the SSCRA to be a most valuable piece of legislation for safeguarding the legal rights of servicemen and women and their families, while at the same time supporting the government's responsibility to provide for national security through mobilization of its manpower.

Before making suggestions for possible amendments to the SSCRA AUSA would like publicly to commend those companies and institutions that have voluntarily put together a financial benefits package for employees who are reservists and have been called to active duty in support of operation Desert Shield. As we see it the mobilization of military manpower must be a joint and cooperative effort on the part of government and the private sector. Efforts to ease the financial burden on mobilized reservists by such companies as Martin Marietta, Wells Fargo Bank of San Francisco, Pepco, XEROX, Fannie Mae and Freddie Mac are particularly noteworthy and commendable. AUSA hopes that other employers and institutions will follow their example so as to minimize the financial burden on these dedicated citizen soldiers and their families.

AUSA believes it is timely for the Congress to examine the SSCRA. It was enacted about 50 years ago and a significant body of law has developed from decisions by various courts at both the state and federal level based on the SSCRA.

A provision of SSCRA you may wish to look at concerns applications for a stay of proceedings. We are aware of at least one court case in which a soldier applied for a stay, but he was not granted one. AUSA would certainly not like to see any soldier now serving in operation Desert Shield return home to find a judgment against him because he was unable to appear in court to defend himself/herself.

Another provision we recommend you examine concerns eviction from leased housing. A change here is necessary to make the provision in the SSCRA, restricting evictions of military families, effective. Currently, the section provides protection from eviction only when the rent for the dwelling does not exceed $150. This unreasonably low amount renders the provision virtually inapplicable to current members of the armed forces. The protection available to a member should at least equal the total of his/her housing allowances.

One of the most beneficial protections provided by the SSCRA over the years has been the prevention of double taxation of a service member's compensation for military service by the states. This may no longer be the case. We are aware of an instance in which a state has made inroads on this provision by requiring the service member's income to be included in state tax returns of the non-military spouse for purposes of determining the spouse's state income tax bracket. This requirement is indirect taxation of the service member's military income. With more and more of today's service families described as "two income" families there can be a significant morale problem.

Finally, as we understand the SSCRA, there is no enforcement mechanism. What happens to someone who violates a provision of the law? We are not aware of any penalties associated with a violation. AUSA believes there should be and we recommend you provide such a provision.

Thank you for this opportunity to express this Association's views on what is and has been for many years a significant law protecting members of the armed forces who do such a magnificent job protecting all of us.

Statement of major General Evan L. Hultman, AUS (Ret.), Executive Director, Reserve Officers Association of the United States before the House and Senate Veterans Affairs Committees on the Soldiers' and Sailors' Civil Relief Act and Veterans Reemployment Rights-- 12 September 1990.

Messrs. Chairmen and Members of the Committees:

On behalf of the more than 115,000 Reserve Officers Association members from each of the uniformed services, I appreciate the opportunity to present to the committees the association's views on the effectiveness of the Soldiers' and Sailors' Civil Relief Act and Veterans Reemployment Rights legislation.

I want to commend the Veterans Affairs Committees for responding so quickly to the needs of Reservists who have been called to active duty. The call-up of Reservists in response to the Persian Gulf crisis has called attention to needs that are not adequately addressed by present law. But before focusing on the needs of Reservists and the inadequacies of the law, I would like to comment briefly on the call-up.

ROA was quick to urge the President to use his authority to call to active duty members of the Reserve components to meet the military requirements in the Middle East. We applaud the President for acting decisively as he has done, and commend you and other members of the Congress for your strong support. ROA has actively supported the Total Force and the greater reliance that is now placed on Reserve forces, and the association is confident that Reservists are ready, willing and able to meet their responsibilities. We believe that the call-up and deployment will demonstrate the wisdom of the Total Force and the greater reliance now being placed on the Guard and Reserve.

The Total Force is predicated on the assumption that Reservists will be available when they are needed. Equity demands that Reservists not be forced to suffer unfair hardships in being called to active duty. Unless the problems and needs Reservists encounter in being called to active duty are satisfactorily addressed, many can be expected to separate from the Selected Reserve and will not be available for future contingencies. We are addressing people issues and the success of the Total Force will depend greatly on how adequately these issues are resolved.

While ROA commends the committees for scheduling this hearing so quickly in response to the needs of those being called to active duty, we would caution the committee that it is much too soon to be fully cognizant of all problems that Reservists are encountering or will encounter. The association is aware of some problem areas, but our awareness is very limited, and we have yet to fully appreciate the meaning of everything being encountered. Nor have we had time to think through and propose rational solutions to many of the problems. While it is important that we focus on Reservists' needs while they are fresh in our minds and while some inequities can yet be corrected in time to benefit those effected, the association would urge the Congress to continue to consider these issues to ensure that the inequities and inadequacies be fully addressed.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

The need to consider the adequacy of the Soldiers' and Sailor'

Civil Relief Act is probably best demonstrated by the plethora of phone calls received by the association just prior to and following the President's 22 August call-up announcement. ROA was inundated by calls from individual Reservists, from the media and even from one of the Senate military liaison offices. In addition to an expected interest in the law, the calls reflected inadequacies and ambiguities.

A major concern is the impact of significantly reduced income of individuals affected by a call-up. The Civil Relief Act allows an individual to reduce interest payments on debts to no more than six percent a year, but it does not address whether or not the creditor will suffer the loss or be compensated during or following the service. ROA commends the government sponsored Fannie Mae and Freddie Mac for their quick and generous response to this ambiguity. According to the media, the American Banking Association has indicated that banks have historically absorbed the cost of reducing the interest rate to six percent when appropriate and are continuing to do so, but the application of the reduced debt service should be universal and not left to the discretion of the individual creditor or financial institution.

The provision that would protect families from eviction from a house or an apartment for which the lease is less than $150 per month is clearly dated and should be reconsidered in the light of today's significantly higher rents or lease payments. A proposed extension of the Variable Housing Allowance (VHA) entitlement to the reserve component when ordered to active duty in excess of 30 days, vice 140 days in current law, has merit. VHA entitlement would in many cases negate the need for the protection intended in the eviction protection provision of the law, but some protection could still be necessary in certain instances. Using a VHA adjusted housing allowance in lieu of the $150 level in current law as a protection from eviction should be considered.

Some consideration must also be given to providing some assistance to medical and other professionals who must subscribe to malpractice or other liability insurance programs to protect themselves against the devastating costs of malpractice or liability suits. A doctor whose income shrinks significantly when involuntarily called to active duty might not be able to pay the very high cost of malpractice insurance while he is on active duty --to cover the malpractice tail from his civilian practice--and could be left without the needed protection. What assurance does the doctor or other professional have that the cost of insurance will not increase as a "new insuree" when he attempts to reinstate his liability insurance upon return to private practice?

The government should set the standards for all employers of Reservists being called to active duty. The "guidance" promulgated by the Office of Personnel Management sets the right tone, but it is incomplete and more importantly should be directive. There will be little uniformity in the benefits provided Reservists if agencies are given only guidance, particularly in times such as today when each agency is under severe fiscal pressures. Lacking consistency in the federal policies, civilian employers will be less inclined to treat Reservists with the consideration they deserve.

Given the high costs of health care, it is acute that consideration be given to continuity in the providing of health care for service members and particularly for their dependents when the member is called to active duty. The provision of military health care and the availability of CHAMPUS while the member is on active duty will not adequately meet all of the members health care needs. A proposal to provide medical benefits for 90 days beyond the last day of active duty for the member and his eligible dependents for Reservists serving in excess of 30 days should be considered, but an extension of benefits would not satisfy all concerns. In addressing health care, pregnancies and other special health care needs, e.g. acute heart conditions, birth defects, etc., must be considered in terms of availability and continuity. Under present law, civilian employers can terminate medical coverage for military members and their dependants when the employee is called to active duty. When service members are reemployed, how soon would health care coverage begin and would pre-existing condition clauses be in effect?

VETERANS REEMPLOYMENT RIGHTS

The major concern with Veterans Reemployment Rights legislation has been the confusion over the content and applicability of its provisions to Reservists called to active duty under 673b or those who have been placed on active duty after volunteering their services to support our national goals in the Middle East. Although the protection provided to the Reservist and the responsibilities of the employer are the same under both circumstances, there were many Reservists, employers, and others who did not know this fact. There are also some deficiencies in the existing legislation, such as the absence of administrative subpoena authority for the Department of Labor and lack of designation of a single agency to represent the interests of the Reservist/employee regardless of who is the employer.

I am aware of a legislative proposal originated by the Department of Labor to completely revise the section of law covering veterans reemployment rights to clarify and simplify its provisions and at the same time strengthen the enforcement mechanisms. ROA supports and endorses such an effort. We also encourage both committees to pressure the Administration to submit this legislative proposal, which has been under development for more than two years, as soon as possible and then to hold the necessary hearings promptly so that this much needed update of important legislation can be accomplished in an expeditious manner.

Thank you for the opportunity to present ROA's views on the adequacy of the Soldiers, and Sailors' Civil Relief Act and Veterans Employment Rights. Again, the committees are to be commended for seizing upon the occasion of the involuntary call-up of Reservists in the support of the Persian Gulf crisis to consider Reserve component benefits and reemployment rights. It is hoped that some of the more obvious inequities can be addressed promptly. The committees are further urged to continue their scrutiny of these areas as we become more aware of the needs to insure that corrective action is taken. I will now be happy to answer any questions that you might have.

NCOA

Non Commissioned Officers Association of the United States of America

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Statement of

Charles R. Jackson
Executive Vice President

before the

Joint Session of the

Committees on Veterans Affairs

September 12, 1990

on

Soldiers and Sailors Civil Relief

and

Veterans Reemployment Rights

Chartered by the United States Congress

The Non Commissioned Officers Association of the USA is sincerely grateful to the Committees for holding this most timely hearing on the Soldiers and Sailors Civil Relief Act and on Veterans Reemployment Rights. Both acts will be tested heavily in the weeks ahead and both are due for change.

Before commenting on substantive changes NCOA recommends let me first comment on the current language of the bills. The Soldiers and Sailors Civil Relief Act (SSCRA) was written fifty years ago in a language and meter common to legislation of the time but archaic today. The provisions of Title 38 pertaining to Veterans Reemployment Rights (VRR) although not nearly as old, have been piecemealed together over the decades in such a manner as to obfuscate their meaning.

In the opinion of NCOA the single greatest improvement this joint committee could make in either act is to rewrite both into more readable and easily understandable pieces of legislation. As a part of such reconstruction a table of definitions should be added to clarify direction and intent. In the case of VRR a statement of purpose should be added to assist in interpreting the intent and application of the law. In both cases standardization should be added to provide equal protection to all persons serving on active duty whether as volunteers, inductees, reservists, or guardsmen ordered to active duty.

SSCRA

NCOA is here today to propose several substantiative changes to SSCRA. The need for at least one change is obvious and a second is probably inevitable. First there is widespread recognition that the $150 lease limit contained in Section 300 [50 USC App 530] is inadequate to today's economy. NCOA considered recommending this figure be set at a higher rate subject to automatic annual adjustment or that the figure be tied to military housing allowances or costs but rejected both ideas. No individual is going to purposely overextend upon entry into a lease agreement simply because he may subsequently be called to active service in the armed forces. Accordingly, the association sees no need to set a cap on the lease figure and urges elimination of this provision from the law.

The second change centers around the six percent annual interest ceiling on mortgage and consumer loans contained in Section 206 [50 USC App 526]. Frankly, NCOA would like to see this provision remain unchanged, but change seems inevitable to accommodate the lending industry. While NCOA understands this figure was originally intended as a ceiling over lesser prevailing rates at the time the legislation was originally enacted, the association is not convinced that its current application is inconsistent with the intent of the law. Consistent with this belief, but also understanding that it is inequitable to require mortgage bankers and lending institutions to suffer an actual loss (since their logical response will be to quit financing loans for servicemembers and reservists) NCOA has a suggestion. Modify Section 206 to provide that the rate shall be the negotiated amount or the Federal Reserve Discount Rate whichever is less. Since the Federal Reserve Rate is the actual cost a lending institution pays for its money it will lose the profit on the loan, but it will not be forced to subsidize the loan. Meanwhile the servicemember may be relieved of a substantial financial burden which we believe is consistent with the intent of the law.

NCOA also advocates the inclusion of several new provisions in SSCRA.

1. A provision should be added allowing reservists, guardsmen, inductees, retirees, and others ordered to active duty an opportunity to nullify performance bonds and contracts for personal or professional services without penalty or recourse. As anecdotal example consider the contractor working on construction of a house. Under current law, unless he is able to

provide his own suitable replacement, the contract holder may be entitled to collect under either or both the performance bond or contract if construction is not completed on time. Upon subsequent release from service the individual may find is professional license jeopardized, and may be unable to obtain bonding at reasonable cost for future endeavors. An SSCRA provision allowing termination of such agreements would protect the servicemember while providing only temporary inconvenience to the contract holder who must now seek another contractor.

2. Provisions should be added to reinforce the protection of servicemembers to be sued only in a "court of competent jurisdiction." A court of competent jurisdiction is generally recognized as one having jurisdiction over the servicemember on the basis of domicile, residence or by agreement of the servicemember. In recent years, too much "forum shopping" has been allowed in obtaining judgments against servicemembers, particularly in divorce cases. While current law does not allow pay garnishment or division unless based on a decree or order issued by a court of competent jurisdiction, military finance centers have no way of enforcing the law because they are unable to make jurisdictional determinations. Accordingly, NCOA recommends that SSCRA require that any judgment, decree or order issued by any civil court must include a statement of jurisdiction on the basis of domicile, residence or agreement of the servicemember to be considered valid.

3. SSCRA should be amended to preclude states from including reserve and guard pay in computations to determine unemployment compensation entitlements upon the loss of primary employment. Currently several states exclude reserve and guard earnings when computing unemployment benefits for those who have lost their primary source of income. However, many states include reserve and guard earnings in such computations, reducing or even eliminating unemployment compensation entitlements to those who have lost primary employment. Unfortunately, in many cases, the reservist or guardsman must quit his reserve role to receive adequate unemployment benefits to sustain self and family. So while the state enjoys a negligible savings in unemployment outlays, the nation loses a trained and useful servicemember. This clearly is inconsistent with the need to maintain a strong ready reserve and has the Federal Supremacy interest to make such a provision a logical addition to SSCRA.

4. While SSCRA was originally designed to protect the servicemember called to active duty, clearly its intention was to protect the servicemember against unfair claims incident to service even if those claims extend beyond active duty. Currently some states have and several states are considering legislation that would allow them to tax a portion of retired pay earned within their state by non-residents. For example, a servicemember who was stationed in California for 5 of 20 years of service might be liable under state law for California taxes on 25 percent of his retired pay even if he is now a legal resident of and living in Oklahoma. SSCRA seems the appropriate place to fashion a provision of law to protect retired servicemembers, regular and reserve, against such interloping tax laws.

VRR

NCOA could detect no obvious errors in current reemployment rights laws, however there are several inconsistencies which concern the association. For example, significant disparity exists between the treatment of those inducted for service and reservists who volunteer or are involuntarily ordered to active duty. Inductees for example must be retained for one year after reemployment (unless dismissed for cause), while reservists must be retained for only six months under similar circumstances. One provision even prohibits the retention of a reservist over a regular "inductee" veteran without regard to the fact that the reservist may have been distinguished in foreign or combat service while the inductee never left the states. Altogether, the VRR law seems to hold some callous disregard for reserve service that cannot be justified in todays unified force structure. Accordingly NCOA recommends uniform VRR treatment of any veteran whether volunteer, inductee or reservist.

Additionally, NCOA repeats its earlier plea that the committee further define the intentions of the act and its provisions. Because of current ambiguities in the act some reservists must use annual leave to complete annual active duty for training requirements while others are granted unpaid (or sometimes fully or partially paid) leave by their employers. NCOA recently became aware of a case where a national guard sergeant major was denied a three year leave of absence by his employer to accept appointment as state sergeant major because, his employer claimed, the sergeant major had already taken more than the four years leave he was required by law to grant. In this case the employer added together all the weekend drills and annual training periods previously granted to the sergeant major to conclude he had completed his four year obligation. NCOA does not believe this was intended under the law but because of imprecision in the language and intent of the law, both of the employers mentioned above have firm reason to believe they are correct.

Finally, NCOA would also support committee action to allow the Assistant Secretary of Veterans Employment and Training (ASVET) to assume a responsibility role in enforcement of Veterans Reemployment provisions and perhaps an expanded roll of providing services to reservists through local veterans employment representatives.

Conclusion

NCOA understands these hearings have been called in response to the recent deployment and activation of reservists to the Persian Gulf. Concurrently we ascertain the committees anticipated input directly related to the situation. However, while some, in fact, many of the recommendations NCOA has made in this statement may not be limited to the current deployment of troops, the Association believes these are important issues which must be addressed. We believe our recommendations should be included in the Acts under review and they are germane to the Acts. Hopefully the committee will take the few extra days it might need to enact all the necessary changes.
Thank you.

STATEMENT BY

LIEUTENANT GENERAL LA VERN E. WEBER (RET.)

EXECUTIVE DIRECTOR

of the

NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

to the

Senate and House Committees on Veterans' Affairs

12 September 1990

INTRODUCTION

The National Guard Association of the United States appreciates this opportunity to testify before this joint session of the Senate and House Veterans' Affairs Committees. The current situation in the Middle East and the exercise of the 200,000 presidential call-up authority are significant events for this nation. These events are providing the National Guard an opportunity to demonstrate its capability and commitment, as well as confirming the Total Force Policy and the changing role of the National Guard.

At the same time, the call-up and overseas deployment are testing old systems and little used laws governing benefits and individual protections. We will come away from the experience of Desert Shield with a wealth of lessons learned. Fortunately for the men and women of the National Guard, your committees have the foresight to know that some of the short comings of existing law are creating immediate hardships and that we cannot wait until the final chapter has been written before we begin resolving them.

EMPLOYMENT RIGHTS

For the past decade, the conflict between increased training requirements and civilian career demands have placed pressures on members of the National Guard. Employer problems have been one of the most frequently cited reasons for terminating a National Guard commitment. As the decade drew to a close, Operation Just Cause highlighted potential problem areas faced by personnel volunteering to perform their National Guard mission in support of a contingency operation.

Existing law was created to protect reemployment rights during mobilizations and voluntary military service in the 1940s; was updated to cover National Guard and Reserve training in the 1950s; was upgraded with further protections for the Guard and Reserve in the late 1960s; and finally was expanded to prohibit discrimination in hiring in 1986. While the entire evolution has been beneficial, it has created a statute that is overly complex, lends itself to multiple interpretations and is further complicated by an enforcement mechanism that starts at the Federal District Court level.

Stability of the force is critical to the readiness of the National Guard. Desert Shield is a true test of the flexibility and effectiveness of reemployment right statutes. It involves multiple categories of personnel serving under several statutory provisions for an extended period of time. The law must preserve both employee rights and employer interests in an equitable balance. While some personnel turnover following Desert Shield is inevitable, an effective and responsive reemployment rights statute is important to maintain required retention levels. The Total Force Policy is essential if we are to have a highly qualified, fully capable military force that is affordable. A strong National Guard is a key element of that Force.

As a nation, we cannot expect our Guard and Reserve personnel to continue their military affiliation without assurance that they have consistent protection for their primary livelihood. American employers are fair and recognize the advantages of employing Guard members, however in order to respond positively to reemployment commitments they must understand their obligations and have clear guidelines to follow.

The 6th Quadrennial Review of Military Compensation (6th QRMC) in its report in August of 1988, provided thoughtful evaluation of reemployment benefits and rights. The National Guard Association of the United States believes that the 6th QRMC was correct in recommending a recodification of the statutory employment protections to consolidate provisions, standardize terminology, clarify entitlements and eliminate the multiple classifications for persons and duty in favor of minimum distinctions. A copy of their recommendations is provided as an attachment for your information and consideration.

As you are aware, there is a statutory limit of four years on the length of active duty a volunteer or member of the National Guard or Reserve may perform and still retain reemployment rights. The four year limit applies to either continuous active duty or cumulative active duty with one employer. That seems appropriate for routine duty and training needs.

There are provisions in Section 2024, title 38 U.S. Code, which extend the four year active duty service limitation governing eligibility for reemployment rights by the period of duty served under Section 673b, title 10 U.S. Code. A similar extension is not specified for duty performed under Section 672(d), title 10 U.S. Code. However, the Department of Labor, for the purposes of Desert Shield is interpreting 672(d) duty to qualify for the extension.

The Total Force Policy and experience of the 1980s have shown that the Guard consistently is involved in missions that are not routine. Members of the National Guard have served in every contingency operation in the 1980s in some capacity. Only in Desert Shield, after the initial deployments, have members of the National Guard or Reserve been called to serve under the provisions of Section 673b, title 10 U.S. Code.

The National Guard Association of the U.S. supports the Department of Labor interpretation that during Desert Shield 672(d) duty and 673b duty should be treated equally with regard to reemployment rights. Further, we believe that an amendment to title 38, U.S. Code is needed in order to ensure that equitable protection for future contingency operations is provided. The evidence is clear that volunteers will initially be used for contingency operations and they will be on active duty orders under Section 672(d). These individuals deserve employment protection.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

A second issue identified in the 6th QRMC report is the outdated dollar limit for protected rental rates under the Soldiers' and Sailors' Civil Relief Act. While recognizing that Washington, D.C. real estate is greatly inflated, none of us can seriously argue that there is even a small percentage of our military personnel who rent or lease their home for $150 or less per month. As we understand the current law, those are the only personnel whose families can expect protection from eviction.

The 6th QRMC, and more recently the Department of Defense, recommended amendment to the Act. Rather than substituting another specific dollar amount, the recommendation is to provide protection for rental or lease agreements that do not exceed the combined monthly military basic allowance for quarters and any variable housing allowance. We strongly urge you to support this flexible and equitable remedy.

The Soldiers' and Sailors' Civil Relief Act covers an expanse of situations and potential liabilities. Because it has had limited application for our membership on a day-to-day basis, we have not fully evaluated the Act for areas requiring change. This Association recommends that the technical experts in the Department of Veterans Affairs and the Department of Defense be requested to undertake a thorough review of the Act and identify areas requiring update and adjustment.

A related issue that has come to our attention is a veterans home loan policy in effect during the current Desert Shield operation that we believe discriminates against eligible veterans who remain active in the National Guard and Reserve. This policy, in fact, may be driven by an interest protection provision of the Soldiers' and Sailors' Civil Relief Act. The policy states: "Lenders must determine whether borrowers are members of the Reserves or a National Guard unit which has or will be mobilized. If so, the loan must be underwritten on the basis of the borrower's active duty income and not civilian employment." The policy specifies lenders not following this guidance may lose their authority to close VA loans.

Alerts have gone out to many units only to be changed based on the nature of providing elements to a multi-national force. Further, potentially any and all units of the Selected Reserve fit within this definition. Even accepting the tenuous condition of the savings and loan industry and the genuine concern for solvency of the Veterans Home Loan Guaranty program, we view this policy as setting a negative precedent and tone with regard to Guard and Reserve service. We request that the policy be reevaluated.

Information on the six percent interest threshold provided in the Soldiers' and Sailors' Civil Relief Act indicates that the provision is being invoked by some personnel. While they are within their legal right, it would appear that this provision is one which might require updating to lessen its impact on current mortgage and loan markets. The veterans home loan program could indeed suffer additional financial distress if a sizeable share of its loans reverted to a six percent maximum rate.

MEDICAL PERSONNEL

A major concern of your committees has been providing quality medical care for veterans and maintaining adequate, high quality medical staff for veterans hospitals. Like all other federal agencies, a percentage of Department of Veterans Affairs personnel are members of the National Guard. We consider that affiliation to be beneficial for all concerned.

There are two problems concerning medical professional personnel that we hope you will examine. We recognize that remedies for these situations are not solely within your jurisdiction and, therefore, will require coordination with other congressional committees.

The first is special pay. The cap on special pay for health care professionals on active duty for less than one year is $5,400 per year versus $40,000 for personnel on active duty in excess of one year with similar training and experience. We recommend that legislation be enacted to authorize special pay for health care personnel ordered to active duty under Section 673b, title 10 U.S. Code, at the same rate as that for personnel performing active duty over one year. Issuance of this pay would serve to offset the unique financial commitments and pay differential of many medical professionals. In addition, special pay could possibly help to resolve the second problem area relating to malpractice insurance.

One element driving up the health care cost spiral is medical liability and malpractice protection. Medical malpractice insurance premiums reportedly range from $6,000 to $120,000 per year. It is estimated that half the insurance policies currently in force, and none of the new policies being written, will cover Guard and Reserve medical personnel who have entered on active duty for claims arising from their civilian practice unless they continue their insurance while on active duty. This creates a serious dilemma - face a devastating gap in liability protection or cover a major financial expense on a reduced salary. This is a deterrent to membership in the Guard and Reserve, as well as to volunteering for military service in time of crises.

Legislative relief is needed. Possible avenues for relief include providing an offset or reimbursement for the cost of keeping existing coverage or suspending the filing of claims against an individual during periods of active duty. Your input and assistance in protecting our medical professionals while they are performing military duty to ensure medical care to our soldiers, sailors, marines and airmen is critical. We all have a moral responsibility to prevent personal, financial catastrophy.

SUMMARY

In summary, there are two personnel issues that were surfaced before Desert Shield and have solutions partially developed in the 6th QRMC report. The rental rate in the Soldiers' and Sailors' Civil Relief Act lends itself to a straight forward, quick fix. The QRMC recommendations on adjustment to reemployment rights statutes lay the ground work to allow Congress to move forward in the near term. A holistic, cautious approach to the problems with reemployment rights is essential since the complexity of the statute is partially a result of piecemeal adjustments.

The full range of pay and benefits issues are currently being examined by the Department of Defense. Issues range from the medical personnel benefits issue discussed to variable housing allowance entitlements and an increase in Servicemens Group Life Insurance (SGLI). We anticipate that additional recommendations for temporary adjustments will be forthcoming. In our view, it is important to provide equitable benefits for personnel in the theater of operations. Further, differentiation between active duty and duty under Section 673b seems inconsistent with the fact that the Government requires the service of all members called. Most of these programs come under the jurisdiction of the Armed Services or Appropriations Committees rather than Veterans Affairs. As problems become apparent, we will share our concerns with the appropriate congressional committees.

We commend you for being vigilant and taking a lead in responding to the immediate needs with necessary quick fixes. We have only begun to evaluate the impacts and needs created by a contingency operation of the magnitude of Desert Shield. Some problems may not be identified until after the operation is well underway or has drawn to a close. Therefore, we strongly recommend that Congress and the defense and veterans communities make a commitment to follow through with the lessons learned. Our service members - Active, Guard and Reserve - are ready to lay their lives on the line as so many veterans before them. We must be ready to accept the challenge of learning from experience and sticking with the work of making precise, long-term adjustment to protect their future rights and benefits.

Excerpt from the 6th Quadrennial Review of Military Compensation Report, August 1988
Volume I, National Guard and Reserve Compensation
Pages 7-10 through 7-13

The 6th QRMC recommends development of legislation to revise the existing system of statutory employment protections in accordance with the following guiding principles:

General:

- Recodify the law into a standard statutory structure, provide accurate section titles, a logical structure, and adequate cross references.
- Standardize the terminology and provide statutory definitions.
- Include an introductory section setting forth the purpose of the law and rules of construction to aid in providing uniform interpretation and application of the law.
- Eliminate obsolete reference and, where appropriate, preserve rights based upon those references through a savings clause.
- Structure the law to provide uniform rights over a variety of circumstances so that it can operate under changing manpower programs without amendment.

Classification and length of absence:

- Eliminate the current classification of persons for employment protections and retain only minimum distinctions based upon whether the member has a military obligation and may be presumed to have been in military service long enough to be aware of his or her rights and obligations.
- Substitute one standard definition of military duty in place of the current multiple classification of duty for employment protections.
- Base eligibility and entitlements upon the length of the absence.
- Define the continuous service limits at five years, with exceptions for persons who are unable to obtain release through factors beyond their control (e.g. extended due to national emergency) and for those whose minimum enlistment for an initial military occupational specialty exceeds five years.
- Eliminate limits on cumulative service for reemployment with longevity. The law should, however, preclude the possibility of a reservist serving on several extended active duty tours with only days or weeks of intervening return to work for a private employer and still retaining reemployment rights.

Clarification of entitlements:

- Define the terms in the statute that accord the employee seniority, status, benefits, incidents and advantages, and promotions.
- Redefine pensions and profit sharing plans as benefits rather than as prerequisites of seniority.
- Clarify that benefits are to be accorded to persons according to the rules and practices of the employer for any employee on leave of absence or furlough, except of absences of 30 days or less.
- Permit employers to establish a cumulative cap of five years on seniority (other than longevity), pensions, and other benefits of employment that accure over time for absence of 30 days or more.

Clarify application to federal employees:

- Extend protections to federal employees of federal corporations, employees of nonappropriated fund activities, and other employees of federal activities that are neither private or state employed.

- Update the provisions relating to executive branch employees to reflect the jurisdiction of the Merit Systems Protection Board.
- Provide for regulatory authority and relief coterminous with the rights and obligations under the law.
- Clarify who is to provide assistance to eligible claimants and to what extent.
- Provide procedures for the prompt resolution of claims for all federal employees.
- Provide adequate cross-references to the provisions of title 5 and eliminate sections of title 5 that duplicate coverage.

Administrative hearings and procedures:

- Provide for local informal consideration of the claims of employees and employers arising under the law.
- Provide for a hearing authority that reflects the community and interests involved, including the claimant's reserve component if applicable.
- Provide the hearing authority meditative authority and powers to investigate and enforce its decisions, including authority to order employers to reemploy claimants pending any appeal.
- Provide time limitations to assure speedy hearing of claims.
- Provide for limited appeal to Federal District Court.
- Provide for penalties, such as the award of special damages, costs, and attorney's fees (including the reasonable cost of a United States Attorney) to discourage unnecessary appeals.
- Clarify and specify the responsibilities and limitations of the Secretary of Labor in providing assistance to persons with military obligations, in providing public information, and in issuing policy or regulations.

Miscellaneous:

- o Modify the authority of the Assistance Secretary of Labor for Veterans' Employment and Training (ASVET) to include preferential employment assistance to members of the Guard and Reserve who do not otherwise qualify as veterans, either by providing that they are veterans for the purposes of such preferences, or by defining them as eligible persons (the next lower category of preference), and by including the National Guard and Reserve components in the statement of purpose of the employment preference law (sections 2001, 2002 of title 38, Unites States Code). This modification would assist in reducing hardship to reservists who are unemployed, and it may reduce administrative costs resulting from pursuit of claims for reinstatement when the reservist would, in fact, prefer to be employed elsewhere.
- o Extend the nondiscrimination provisions to prohibit discrimination based upon any present, past or potential military obligation. This would prohibit the current practice of some employers (mainly state agencies) of forbidding employees to join reserve components and would protect returning veterans who may be refused employment, not only because they are veterans but because of residual reserve obligations or potential for reserve affiliation.

The QRMC recommendations would have no direct impact on the DoD budget. However, the recommended simplification and substantive changes to existing statutory employment protections may result in substantial savings for the DoD; the changes should reduce costs for recruitment and training that are associated with current reserve attrition resulting from problems with employers. Costs of administration for the Department of Justice, Department of Labor, Office of Personnel Management, Merit Systems Protection Board and Federal Court Systems should decrease if conflicts between employers and employees and decrease through clarification and simplification. No additional costs should be incurred if all National Guard and Reserve member are provided preferential employment assistance under the current system.

INSERT FOR THE RECORD

Hearing: September 12, 1990
Joint House/Senate Veterans' Affairs Committees

Page 106, Line 2433

The information follows:

General Weber. The following information provides a sample of specific actions taken by the management of organizations such as a bank, a defense contractor, and a state government. We have also submitted a summary listing as of September 24, 1990 of actions taken by other employers. While this listing is not all inclusive, we believe it shows trends of actions being taken by employers.

(data attached for inclusion in record)

MARTIN MARIETTA CORPORATION

NORMAN R. AUGUSTINE
CHAIRMAN AND CHIEF EXECUTIVE OFFICER

6801 ROCKLEDGE DRIVE
BETHESDA, MARYLAND 20817
TELEPHONE (301) [illegible]

August 30, 1990

The current crisis in the Middle East looms as a significant threat to the well-being of our Nation and our allies around the globe. Actions being taken by President Bush are intended to resolve this crisis as rapidly as possible with minimal physical risk to the parties involved.

We are aware that you have served in the Reserves or National Guard and that there is a possibility that you will be called upon to serve the Country during this time of crisis. Martin Marietta is proud of its employees' involvement in supplementing the Nation's active military strength when such conditions arise, and we want you to understand that we are aware of the sacrifices that you have made and may have to make during this period of time.

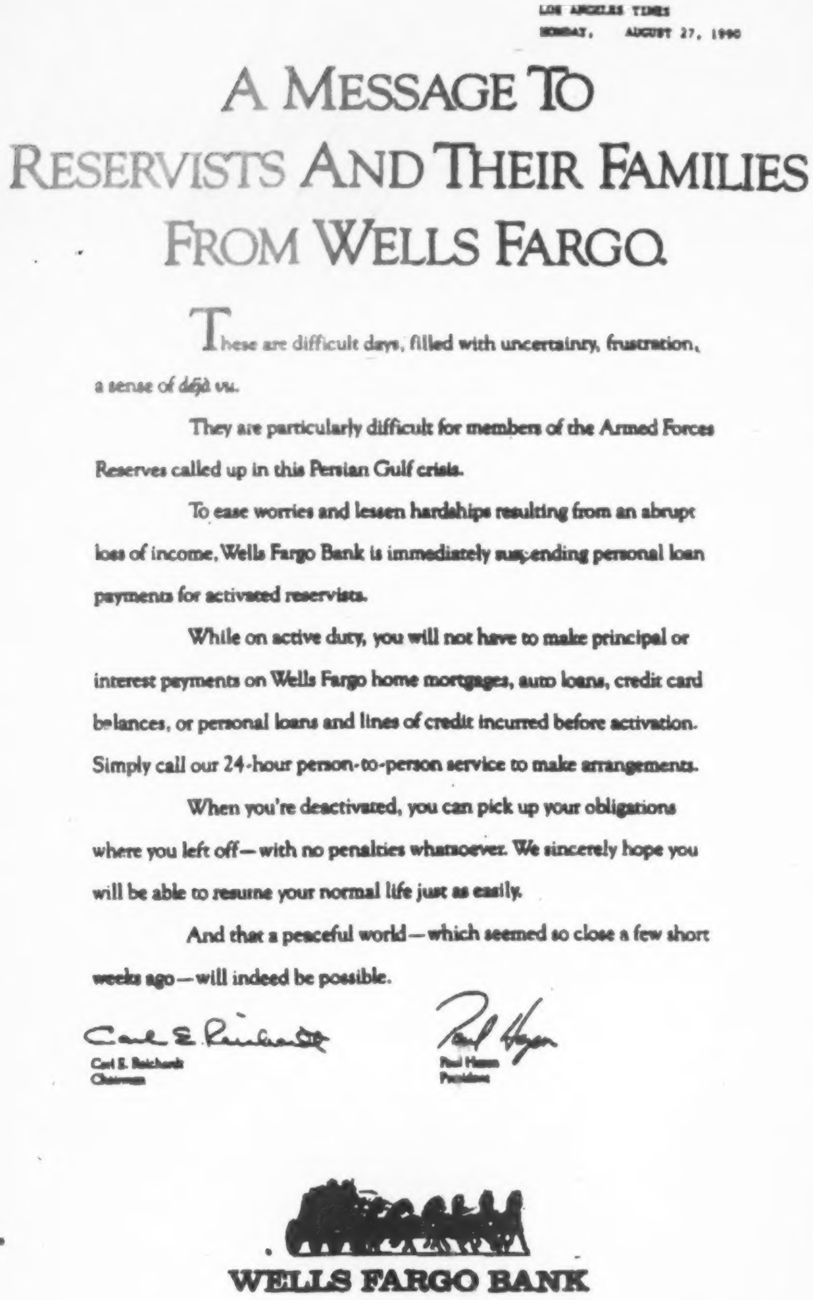
To help alleviate your financial and family concerns, Martin Marietta will pay the difference between your current base pay and the pay you receive from the government for a period of up to 90 days. Extensions to this will be considered as circumstances warrant. In addition, your spouse and dependents will be able to continue coverage under Martin Marietta's Group Medical Benefit Plans for up to 30 days should you be called to service. This extension will permit an orderly transition to services provided to military dependents by the government. Consideration will be given for extension of medical benefits in cases where conditions support the need. Since plans for military dependents do not provide dental and vision services, your spouse and dependents will continue to be covered for these services by the Martin Marietta plans. Monthly premium contributions for dependent coverage during this period will be waived. A Human Resources representative, specifically assigned to assist you, will fill you in on the details of these important issues and other special items that might be of concern to you at this time.

We appreciate the contribution that you are making to our Country. We wish you safety and look forward to your speedy return as a member of the Martin Marietta team.

All best wishes.

Sincerely,

Norman R. Augustine



LOS ANGELES TIMES
MONDAY, AUGUST 27, 1990

A MESSAGE TO RESERVISTS AND THEIR FAMILIES FROM WELLS FARGO.

These are difficult days, filled with uncertainty, frustration, a sense of *déjà vu*.

They are particularly difficult for members of the Armed Forces Reserves called up in this Persian Gulf crisis.

To ease worries and lessen hardships resulting from an abrupt loss of income, Wells Fargo Bank is immediately suspending personal loan payments for activated reservists.

While on active duty, you will not have to make principal or interest payments on Wells Fargo home mortgages, auto loans, credit card balances, or personal loans and lines of credit incurred before activation. Simply call our 24-hour person-to-person service to make arrangements.

When you're deactivated, you can pick up your obligations where you left off—with no penalties whatsoever. We sincerely hope you will be able to resume your normal life just as easily.

And that a peaceful world—which seemed so close a few short weeks ago—will indeed be possible.

Carl E. Reichardt
Carl E. Reichardt
Chairman

Paul Hazen
Paul Hazen
President

WELLS FARGO BANK

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 15

WHEREAS, the President of the United States issued an Executive Order on August 22, 1990, authorizing the Secretary of Defense to call up selected members of the Reserve and National Guard to active duty during the Middle East crisis and authorizing the Secretary of Transportation to similarly call up members of the Coast Guard Reserve;

WHEREAS, Reserve and National Guard members who are activated during this crisis serve a vital national interest for which they deserve the full support of the citizens of this State;

WHEREAS, the State of New Jersey recognizes that a strong, ready Reserve and National Guard are essential to the defense of this country and vital to this State in time of emergency or natural disaster;

WHEREAS, the State of New Jersey encourages its employees to serve in the Reserve and National Guard and recognizes the personal and economic sacrifices of its employees who are called to active duty during the Middle East crisis;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby Order and Direct:

1. New Jersey State employees who are called to active duty during the Middle East crisis shall be entitled upon termination of active duty to return to State employment with full seniority and benefits consistent with State and federal military reemployment and seniority rights.
2. During active duty for a total of up to 180 days, these State employees shall be entitled to receive a salary equal to the differential between the employee's State salary and the employee's military pay.
3. These State employees shall be entitled to State employee health benefits, life insurance and pension coverage during active duty service for which they receive differential salary as prescribed in this order as if they were on paid leave of absence.
4. The Commissioner of Personnel shall implement this Executive Order and each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law to cooperate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purpose of this Order.
5. This Order shall take effect immediately.

GIVEN, under my hand and seal this 13th
day of September in the Year of our Lord,
one thousand nine hundred and ninety, and
of the Independence of the United States,
the two hundred and fifteenth.

JAMES J. FLORIO
Governor

EMPLOYERS EXTENDING BENEFITS TO G/R EMPLOYEES
AS OF SEPTEMBER 24, 1990

COMPANY	EMPLOYER NAME	LOCATION	BENEFITS
AT&T	Burke Stinson, Spokesman	Northern, Va	SAL DIFF. 2 WKS
Perpetual Savings Bank	William Craig, Senior Vice-Pres.	Vienna, Va	PAY 2-WKS MILITARY LEAVE
Fokker Aircraft, USA	Linda Crowley Mngr, Pers & Admin	Alexandria, Va	SAL DIFF.
Fairfax County	J. Hamilton Lambert County Executive	Fairfax, Va	FULL SAL FOR 3 WKS
US Postal Service	Mr. Frank Postmaster General	District of Columbia	PAY MED BEN FOR 13 WKS
Bergen Brunswig Corp.	Jack Fay, Spokesman	Costa Mesa, Ca	SAL DIFF. INDEF
AST Research Inc.	Mr. Howard Derman	Irvine, Ca	SAL DIFF. 2 WKS; LONGER CASE BY CASE
Gannett Co., Inc.	Unattributed	Northern, Va.	1-2 WEEKS PAY
Elwel Steel and Iron	Mr. Edwin Dane President	Springfield, MA	SAL DIFF. FOR 90 DAYS
MCI Communications, Inc.	Mr. John Zimmerman	Washington, DC	EXT. PAY SEVERAL WKS FULL HEALTH BEN for DURATION
Inova Health Systems	A Senior Vice-President of Human Resources (name unknown)	Washington, DC	EXTEND PAY SEVERAL WKS & CONTINUE BEN FOR DURATION

COMPANY	EMPLOYER NAME	LOCATION	BENEFITS
Martin Marietta	Unnamed Spokesman		A PACKAGE OF BENEFITS
First Interstate Bank of California	No attribution	California	DEFER P&I PAYMENTS ON ALL LOANS WHILE ACTIVE
OPM	Constance B. Newman Bill R. Phillips, Dep. Dir	Washington, DC	NO FURLOUGH
Wells Fargo Bank	Kim Kellogg, Spokesman	San Francisco, CA	DEFER P&I PAYMENTS WHILE ACTIVE
EXXON	Human Resources Department		SAL DIFF./LUMP SUM/ FAMILY MED/DENT
Pepco	Dana Grabiner, Spokesman	Washington, DC	DIFFERENCE IN PAY AND BENEFITS
Xerox Corp	Thomas Abbott, Spokesman	Rochester, New York	SAL DIFF. 6 MOS & FULL MED/DENT FOR 6 MOS
General Motors Corp.	Patricia Molloy, Spokeswoman	"	SAL DIFF. 6 MOS & BENEFITS FOR 30 DAYS
Bausch & Lomb Inc.	Barbara Kelley, Spokeswoman	"	CONTINUE MED/DENT & LIFE INS. FOR 3 MOS
Manufactures Hanover	Judy Walsh, Spokeswoman	"	REDUCED PAYMENTS
United Services Automobile Association	Robert McDermit, Chairman	San Antonio, TX	SAL DIFF. 1 YR
Xerox Corp	Unavailable	Stramford, CT	SAL DIFF. 1 YR FULL MED/DEN 6 MOS
Fluor Corp	Spokeswoman	Irvine, Ca	SAL DIFF. 30 DAYS INDEF. BENEFITS

COMPANY	EMPLOYER NAME	LOCATION	BENEFITS
Freddie Mac	Henry Cassidy, SRVP	Washington, DC	SSRA-ABSORB ANY LOSSES
Fanny Mae	Unattributed	"	SSRA-ABSORB ANY LOSSES
U.S. Air	Mr. Dave Shipley	Arlington, VA	NORMAL INSURANCE FOR FIRST 30 DAYS OF AD
CSL	Roland Livingston		SAL DIFF. AND COMPANY BENEFITS FOR 90 DAYS
Central and South West Services, Inc.	Walter Ratcliff VP, Human Resources	Texas (utility)	SAL DIFF.; HEALTH INS. EXTENDED 90 DAYS FOR DEPENDENTS
Rep. Toby Roth(R WI-8)			
San Mateo County		San Mateo County California	SAL DIFF. BEYOND 30-DAYS
Wells Fargo	Lisa Clark	San Francisco, CA	SAL DIFF. FOR 90 DAYS PAY DEP HEALTH BEN FOR 1-YR
Lucky Supermarket		San Mateo County California	SAL DIFF. FOR UP TO 6 MTHS
Ampex Corp.	Dick Jacquet VP, Human Resources	Redwood City, CA	SAL DIFF.; HEALTH BEN FOR 30-DAYS
Phillip Morris	Robert J. Moore Dir, Comm Relat.	Richmond, VA	SAL DIFF. PROVIDE BEN MIL MIGHT NOT

Statement of

Robert J. Engelstad

Senior Vice President, Mortgage and Lender Standards

Fannie Mae

Before the
COMMITTEE ON VETERANS' AFFAIRS
of the
UNITED STATES SENATE
and the
COMMITTEE ON VETERANS' AFFAIRS
of the
UNITED STATES HOUSE OF REPRESENTATIVES

SEPTEMBER 12, 1990

Mr. Chairman and members of the Committees, I am Robert J. Engelstad, Senior Vice President for Mortgage and Lender Standards for Fannie Mae. Fannie Mae very much appreciates this opportunity to discuss with the Committees the issues presented by the Soldiers' and Sailors' Civil Relief Act.

Fannie Mae is a congressionally chartered, privately owned company whose sole business is to support housing finance through the secondary market for residential mortgages.

With our congressional mandate of providing ongoing assistance and liquidity to the primary mortgage market, Fannie Mae is pivotal to home finance delivery. We are the nation's largest investor in mortgages secured by properties for low-, moderate- and middle-income families and a major issuer of mortgage-backed securities (MBS) backed by those mortgages. As of July 31, 1990, we had almost $110.6 billion of mortgage loans in our portfolio and had outstanding approximately $268.1 billion of guaranteed mortgage-backed securities, backed by loans Fannie Mae holds as trustee for the securities' owners.

Fannie Mae made mortgage money available to over 7 million American families in the 1980s. We channeled $450 billion of mortgage money from the financial markets to home buyers, purchasing mortgages with an average balance of $60,000. In the 1990s, we will finance homes for at least 10 million more families.

Over and above what we do for middle-income families, we're generating new housing finance solutions aimed at Americans with lower incomes. In the past two years alone, we targeted over $4 billion to expand housing opportunities for 80,000 low- and moderate-income American households. Our mission is directed not only at home buyers but those who rent their homes as well. We have strengthened our multifamily program in the past three years and now have directed over $15 billion to local housing markets for the financing of multifamily housing, keeping rent affordable for 400,000 apartment dwellers with average incomes of $20,000.

Our benefits to housing derive from operating efficiencies resulting from our charter, and the large scale of our operations. Most recently, Fannie Mae has become even more critical to buffer turbulence in the primary markets. Since enactment of reforms in the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (or FIRREA), many thrifts have curbed portfolio holdings of home loans and increased sales to secondary-market investors. Fannie Mae has successfully ensured the continued flow of mortgage credit to home buyers by increasing its share of new mortgages funded and guaranteed.

I. Overview of Soldiers' and Sailors' Civil Relief Act of 1940, As Amended (50 U.S.C. App. 501 et. seq.).

The Soldiers' and Sailors' Civil Relief Act ("the Act") gives debtor relief to civilians who are mobilized into the military. The Act covers mortgage debts incurred by military reservists prior to mobilization. The relief under the Act begins when the service member receives his or her call up orders and continues until the return to civilian status. Key provisions of the Act affecting mortgage debt include:

- o Reduction in the Mortgage Interest Rate. The Act reduces the mortgage interest rate to six percent during the service member's period of active duty.

- o Stay in Enforcement of Mortgage Terms. The enforcement of the mortgage obligation can be completely stayed if the service member obtains a court order finding that his or her ability to maintain the obligation has been materially affected by entry into the military service.

- Court-authorized Foreclosures. Foreclosure proceedings cannot be commenced (or continued) against an eligible service member unless he or she has given written consent to the proceedings, the court authorizes commencement of proceedings as a result of its determination that military service has not materially affected the service member's ability to repay the debt, or the court authorizes the re-commencement of proceedings that were authorized previously.

- Extension of Redemption Period. Any statutory redemption period will stop running during the service member's tour of duty and will resume after his or her separation from active duty. This is true even if the foreclosure took place before the service member was called to active duty, as long as the redemption period had not expired by the date he or she received orders to report for duty.

II. Procedures Instituted by Fannie Mae to Comply with the Soldiers' and Sailors' Civil Relief Act of 1940.

Fannie Mae's military indulgence relief policy follows the intent of the Act and, in certain cases, goes further than the Act in providing relief to those who are called up to active military duty.

A. Reduction in Interest Rate to Six Percent.

The Act does not specify the actions that a service member must take to notify a mortgage holder that he or she qualifies for a reduced interest rate. Most mobilization instructions advise the service member to notify his or her mortgage holder before beginning to make payments at the reduced rate. Because Fannie Mae, as mortgage holder for its own account or as trustee, operates through a network of approximately 2,400 mortgage servicers, an individual service member's point of contact with us will be through one of these servicers. We expect that most individuals will notify us of mobilization to make sure they can determine the exact payment that they should make. Some may reduce their payments, however, without notifying us in advance. To confirm a borrower's eligibility under the Act, Fannie Mae has advised its servicers to consider including a form letter with any partial payments that are returned to borrowers explaining the provisions of the Act and providing instructions on how eligible persons can obtain benefits. Servicers have also been encouraged to obtain information from their origination files that will help them determine a borrower's military status.

Under the terms of the Act, the difference between the mortgage interest rate and six percent is not deferred, rather it is "forgiven." Fannie Mae, as the mortgage holder, will absorb the cost of this interest rate reduction.

Because the six percent interest rate includes late charge percentages, Fannie Mae has told its servicers to waive the collection of late charges as long as the terms of the Act apply.

Fannie Mae will permit servicers to accept a service member's "orders" as evidence of his or her eligibility to receive the reduced interest rate. The reduction in interest rate to six percent should be automatic. Fannie Mae's military indulgence policy exceeds the Act's requirements in two respects. First, Fannie Mae will not require the servicer to determine whether entry into active duty materially affected the service member's ability to pay interest at the mortgage interest rate. Second, Fannie Mae does not intend to exercise its right under the Act to petition the court to reinstate the higher mortgage interest rate.

B. Forbearance Under Military Indulgence.

Under our military indulgence policy, Fannie Mae will accept payments of less than the regular monthly payments (as calculated using a six percent interest rate) if the service member is unable to continue making full monthly payments even at the lower interest rate. However, because the extent of the service member's ability to pay will vary from individual to individual, we are not establishing a minimum amount that must apply in all situations. Mortgage servicers should arrange repayment terms that best suit the individual service member's ability to pay, while keeping in mind the need to minimize the accumulated arrearages. The service member does not have to have a court order to obtain this relief.

Before granting military indulgence, Fannie Mae requires the service member to provide a copy of his or her military orders and to complete a form requesting indulgence from making the required mortgage payment. If the service member is being deployed immediately, the servicer may dispense with the completion of this form and obtain over the telephone as much of the information needed to develop an appropriate forbearance plan, requesting that additional information be provided as soon as possible.

Relief under our military indulgence policy can continue for the entire term of the service member's active duty and for an additional three months after he or she is released from active duty. At that time, Fannie Mae will generally expect the service member to repay all delinquent installments under the mortgage. When the service member is unable to do that, however, the mortgage servicer will work out a repayment plan that cures the delinquency as soon as possible. If circumstances warrant, Fannie Mae will consider modifying the mortgage terms (by capitalizing the arrearages or extending the overall term) once the service member has completed his or her tour of active duty.

C. Institution or Re-commencement of Foreclosure Proceedings.

If a service member who has been granted military indulgence becomes 90 days delinquent under the terms of the relief, Fannie Mae has directed the servicer to not initiate foreclosure proceedings, but to investigate the reasons for the delinquency and arrange additional forbearance if appropriate. If the service member cannot make any payments, the servicer asks the service member to request a stay in enforcement of the mortgage terms from the court. Delinquencies that occur during a service member's tour of active duty are not reported to credit bureaus.

Fannie Mae requires its servicers to ascertain the military status of the borrowers for any mortgages that are currently in the process of foreclosure to make sure that they do not continue foreclosure proceedings against any borrower who is eligible for relief under the Act without his or her written permission. If the servicer is unable to obtain information from a borrower, it may proceed with the foreclosure proceedings, assuming that the borrower is not eligible for relief under the Act. Some jurisdictions may require affidavits from borrowers regarding their active duty military service before proceedings can be commenced. Fannie Mae has made its servicers responsible for determining and complying with specific state or local laws that address the Act's effect on the foreclosure process.

D. Delivery of New Mortgages to Fannie Mae

The call to active duty may also affect eligible service members who are in the process of buying a home. To provide maximum benefit to service members and to assist lenders who may have mortgages in their pipeline that may be affected by the provisions of the Soldiers' and Sailors' Civil Relief Act, our purchase or securitization of mortgages will be based on the following guidelines:

- For mortgages closed before June 1, 1990, if the borrower has been called to active duty, thus keying the interest rate reduction to six percent, Fannie Mae will not accept delivery of the mortgage until after the borrower's active duty status ends and the mortgage interest rate is reinstated to its original interest rate (or to any "scheduled" adjusted interest rate if the mortgage is an adjustable-rate mortgage). If the borrower has not been called to active duty, the lender may deliver the mortgage to us.

- For mortgages closed between June 1, 1990 and August 29, 1990, the lender may deliver the mortgage to us even though the borrower was qualified on the basis of his or her civilian salary. This is true whether the mortgage interest rate has already been changed to six percent under the terms of the Act or may become subject to an interest rate reduction if the borrower is called to active duty.

- For mortgages that will be closed after August 29, 1990, the lender may qualify the reservist on the basis of his or her civilian income, regardless of whether he or she has been called to active duty. The lender may deliver the mortgage to us even if the interest rate has been reduced to six percent.

STATEMENT OF J. DENIS O'TOOLE
ON BEHALF OF
THE U.S. LEAGUE OF SAVINGS INSTITUTIONS
AT THE
JOINT HEARINGS OF
THE HOUSE AND THE SENATE COMMITTEES
ON
VETERANS AFFAIRS
ON THE
STATUS OF THE SOLDIERS' AND SAILORS' RELIEF ACT

September 12, 1990

A. Introduction

1. USL is the primary trade association for savings associations and savings banks. There are currently 2,453 private sector thrifts with over $1 billion in assets. Most of these institutions remain specialized mortgage and consumer lenders. On average, about 62% of the total assets of savings institutions are held in residential mortgages or mortgage-backed securities. Approximately 5% of assets are in consumer loans.

2. Relief provisions of the Soldiers' and Sailors' Civil Relief Act appear applicable to all forms of personal obligation typically extended by savings institutions including home mortgages, as well as loans for mobile homes, equity loans, personal loans, home improvement loans, auto financing and credit card debt.

B. Cooperation. The USL and member institutions want to be as cooperative as we possibly can in assisting military reservists called to active duty by President Bush's executive order. Thrifts have traditionally had a strong customer relationship and community orientation. We believe that a healthy, profitable thrift business will survive and prosper in the 1990s. Key to our survival is our core business of residential mortgage finance and consumer family lending.

1. The responsible institutions of the thrift business accept a patriotic and business responsibility to honor the letter and spirit of the Soldiers' and Sailors' Civil Relief Act. We empathize with the servicemen and women whose lives are being impacted by the call to National service.

2. USL Technical Services Group has prepared advisory material for the information and use of our membership in working with service persons called to active duty. USL will work with Members of Congress and the Executive Branch to safeguard the economic interest of individuals asked to serve the defense of our country.

C. 1990 Circumstances

1. Thrift institution management in the 1990s faces many competing responsibilities that were not existent in 1960, much less 1940 when the last massive calls on our reserve forces were made. Thrift and bank managers today face responsibilities that are mandated by other Federal laws, regulatory interpretations, and court decisions.

   a. Lenders clearly have a responsibility under the Soldiers' and Sailors' Civil Act to mortgagers who are called into military service and thereby placed at a disadvantage with respect to their civil obligations.

   b. Lenders also have a responsibility to depositors to protect safety and soundness of institution, and regulators pursuant to Congressional directive are pursuing a vigorous program of examinations, monitoring, and enforcement. Last year's Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) has fundamentally restructured the regulatory and financial structure of the thrift business.

c. Lenders have seen their responsibilities broaden to include third-party investors -- who as the process of loan securitization has increased -- acquire assets for their own portfolios particularly in the mortgage finance field that continue to be serviced by the lending institution.

D. Oversight. The mobilization of the 46,700 Reservists and Guardsmen as a result of the Persian Gulf crisis makes it appropriate for the Joint Committee hearings into oversight of the Act to review its fairness and effectiveness.

1. While the number of individuals called up may have significant impact on local communities and individual financial institutions, the numbers mobilized to date are not as large as past call ups. And the number of loans affected is relatively small to overall debt outstanding.

2. USL reaffirms its support for the general purpose of the Act to protect members of the Armed Forces from the enforcement of certain civil liabilities and debt relief because of financial hardships arising from active military service.

3. USL believes that while the provisions of the Act are generally effective in protecting the economic rights of armed service members called to active duty, this Congress should be receiving recommendations on possible statutory changes to reflect changes in our society since the 1940s, changes in the financial market and the products offered to our customers, and the regulatory environment in which regulated financial institutions operate. These recommendations should be received with the idea of submitting legislation for review and consideration during the 102nd Congress.

E. Specific Recommendations. The legislative history of the Act indicates that it came into existence in 1940 and last underwent substantial amendment in 1942. Originally scheduled to expire at the end of World War II, it was extended by the Selective Service Act of 1948 to such time as "repealed or otherwise terminated by subsequent Act of the Congress." In reviewing the Act's current provisions, the problem areas we see are these:

1. Eligibility

The Act applies to persons on active duty in the military service, which includes the full-time members of the Army, Navy, Air Force, Marines, Coast Guard, and Public Health Service. It also applies to members of Reserve and National Guard units who have commenced active service, whether by volunteering or pursuant to a call-up through regular channels. The Act takes effect from the time a person is ordered to report for duty. The Act also seems to require a showing or determination that ability to meet financial obligations has been impaired by active military status.

Our concern in the eligibility area are several. First, we believe that there may be a public misunderstanding about the law since it has not been in public discussion the past decade. Some are under the impression that the Act automatically gives an eligible person complete immunity from their obligations. This is, of course, not the case. The Act covers debt obligations of persons in active service made before the beginning of active service, and it automatic, which raises some questions about how notice can best be given of the obligor's new status given the fact that lenders provide financing in a much broader geographical pattern than was the practice in the 1940s. A ceiling of 6% on an interest rate in today's world is of questionable economic validity when the objective cost of such borrowings as Treasury bills and Federal agency debt issues bear rates that exceed this figure. The Act does not specifically address the issue of loan amortization, which has become a more complicated issue due to the increased size of mortgage loans and the greater use of adjustable rate mortgages. However, Sec. 517 of the Act provides the mortgagee with the authority to modify, terminate, or cancel a mortgage or other security instrument. But, given the bank regulatory agencies insistence on deposit institutions taking the most conservative approach to loan underwriting and loan supervision, we have some concerns about how much relief a mortgagee may give on reduction of principal payments or alternatively how much principal a mortgagor will be required to pay?

3. Servicing.

A major change in the mortgage financing process that has virtually developed in the past twenty years is the development of the secondary mortgage market. The market consists of sales to agencies such as Fannie Mae, Freddie Mac, and Ginnie Mae -- all of which have issued their own policy guidelines for their services. The market also has a private placement side.

While Fannie Mae and Freddie Mac have both indicated that they will absorb the cost of reducing payments from market rate to the 6% statutory limit, Ginnie Mae has determined that issuers are responsible for payment to security holders of any shortfall resulting from the application of the Act. This will cause a hardship to issuing financial institutions and have consequences to the overall market. Since HUD has advised Ginnie Mae that the benefits of the Act constitute a forgiveness of the obligation, rather than a forbearance of collection, the issue arises as to the bank regulatory agencies treatment of these loans and the booking of this additional expense to the financial institution.

4. Regulatory.

While the national universe of loans affected by the mobilization of 40,000 reservists is relatively small, the activation of specific reserve units may only applies where active service materially effects the debtor's ability to meet his or her debt obligation. Our reading of the Act suggests that in nearly every section of the Act requires a determination that the ability to meet financial obligations has been impaired by active military service status. Second, we are concerned about the burden of determining "material effect" on the service person's resources.

2. Rate

Section 526 of the Act provides that no obligation or liability may bear an interest rate in excess of 6% per annum during any part of military service if the debt was incurred before the obligor entered active duty. The relief granted by this section is create a substantial concentration of loan interest reductions in various geographic areas of the country. This development could create a hardship on thrifts and banks operating with capital compliance plans, and we would appreciate the Joint Committees' assistance in getting the bank regulatory agencies policy guidance on how to proceed in these circumstances without risking the continuing operation of a financial institution that is trying to comply with the provisions of the Soldiers' and Sailors' Civil Relief Act.

E. Conclusion

1. We believe that the provisions of the Act should be read with a positive attitude toward those individuals who are serving in our country's defense. The savings association business stands ready to cooperate with military personal who need assistance in tending to their financial obligators. We appreciate the opportunity to present our views today and identify for you some potential areas for modification to the Act in your oversight capacity.

STATEMENT OF
DONALD W. GRIGLEY
SENIOR VICE PRESIDENT OF CONNECTICUT NATIONAL BANK
HARTFORD, CONNECTICUT

ON BEHALF OF
THE AMERICAN BANKERS ASSOCIATION
AND
THE CONSUMER BANKERS ASSOCIATION

BEFORE
THE SENATE COMMITTEE ON VETERAN'S AFFAIRS
AND
THE HOUSE COMMITTEE ON VETERAN'S AFFAIRS

CONCERNING
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

SEPTEMBER 12, 1990

Misters Chairmen and members of the Committees, I am Donald W. Grigley, Senior Vice President of the Connecticut National Bank in Hartford, Connecticut. I also serve as Chairman of the Consumer Credit Executive Committee of the American Bankers Association ("ABA") and as a member of the Communication/Membership Council of the Consumer Bankers Association ("CBA"). I am pleased to appear before you this morning to testify on behalf of ABA and CBA regarding the Soldiers' and Sailors' Civil Relief Act. That Act establishes certain rights for individuals entering or called to active duty in the military service. The aim of the Act is to protect members of the Armed Forces from enforcement of certain obligations they are unable to meet because of their absence, or because their military pay is insufficient to make payments on debts incurred before active service where ability to repay was based on civilian earnings.

The current law was enacted nearly 50 years ago. Banks complied with the Act during World War II, the Korean War, and Vietnam. And now, as President Bush calls up reservists to active duty to respond to the Middle East crisis, banks again stand ready to help military personnel through difficult times. The banking industry is committed to support not only the letter of this law, but its spirit. While there are certain implementation problems with respect to the Act, primarily due to changes in lending methods since its enactment, we are not suggesting that any changes be enacted now. When the crisis is over, which we all hope will be soon, we certainly stand ready to work with Congress to adapt the Act to today's lending practices.

The Act addresses several areas, including mortgage and other credit obligations, judicial proceedings, employment, termination of leases, and insurance. While other aspects of the Act affect banks, our focus today will be on Section 206 of the Act which provides:

> No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall... bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest in excess of 6 per centum per annum is not materially affected by reason of such service...

In many instances, banks are accommodating their customers to an extent even beyond the specific requirement of the Act which requires banks to reduce interest rates on loans to 6%. Some banks, for instance, are deferring all payment of principal and interest until after the reservist is relieved from active duty. In these cases, no payments are due and no interest accrues during the period of active duty. Similarly, some credit card issuers are waiving minimum payment requirements for a period of time. Some banks are also providing toll free numbers to answer questions and provide information. Where the Act is ambiguous or unclear, banks are interpreting the Act liberally in favor of the reservist.

ABA and CBA have responded to hundreds of telephone inquiries on this Act. ABA has provided banks a memorandum alerting them to the Act's provisions and offering preliminary guidance. CBA also has been providing its members information on the Act. We are submitting those documents for the record. We are also submitting a copy of a document analyzing the Act published by ABA in 1961.

Thus far, the direct costs of the interest rate reduction have been minimal since the number of reservists called up has been relatively small on an individual bank basis. Nevertheless, banks have had to mobilize to review and analyze the law, develop and implement policies, advise and educate staff and customers, draft modification agreements and disclosure documents, and develop operational procedures and systems to process requests for interest rate reductions. As in the past, banks are willing to undergo these efforts to assist activated military personnel.

The renewed utilization of the Act has presented many difficult questions because the original law, passed in 1940 and amended in 1942, could not have anticipated the complexities and variations of the credit products of today's marketplace nor the automation of the loan processing system. Moreover, many laws governing banks and credit transactions which may conflict with the Act did not exist in 1940.

For banks, the major consideration in responding to requests for interest reduction is the inherent limitations of their operating systems. The resultant operational difficulties arising in implementing the Act are manifested in various ways. Because of computer system limitations, banks are compelled to revise and complete manually loan payment schedules and related documents. While automated loan systems have greatly improved loan processing accuracy and efficiency, they often lack the flexibility to modify terms and calcuations for individual loans. If the number of requests to a bank remains small, the manual review required is usually manageable. However, expenses and operating complications increase with the number of requests.

The processing of credit card accounts presents an example of the operational challenges which accompany a temporary reduction of interest for a limited number of accounts. At the time of the Act's enactment in 1940 and its amendment in 1942, credit cards were rare and sophisticated computer systems nonexistent.

Many credit card systems are designed to assume that all accounts of a particular class will receive similar treatment: that is, they will calculate interest in the same manner, will apply payments in the same manner, and will apply the same general terms and conditions. Sophisticated programs may allow variations of certain terms, such as transaction fees, for special classes of accounts. Other systems may not. In these cases, card issuers have to implement procedures to identify and segregate each activated reservist's account every month and to calculate manually the interest on that account each month.

Similarly, credit card systems are designed to provide automatically to cardholders certain information required under federal laws enacted since the adoption of the Soldiers' and Sailors' Civil Relief Act. For example, the Truth in Lending Act, enacted almost 30 years after the Relief Relief Act became law, requires a credit card issuer to provide to its cardholders monthly statements which disclose very specific information about the account, including both the periodic and annual percentage rates applicable to the card issuers' credit card program. The annual and periodic percentage rates are frequently preprinted on each cardholder statement. The present Truth in Lending Act apparently provides no exception for a lower rate, even the very favorable 6% rate provided under the Act. Therefore, a card issuer is required to print special statements for cardholders covered by the Act, physically alter its existing statements for such cardholders, or include a statement stuffer disclosing the reduced corresponding annual percentage rate applicable to such accounts. Regardless of the approach selected, the card issuer must separately identify and process those statements that will be sent to cardholders covered by the Act from among the tens of thousands, or even millions, of statements sent to cardholders each month. In most cases this separation and special processing must be done on a manual basis, which is both time consuming and expensive. While the 6% rate established under the Act provides an important benefit for activated personnel, Congress has never considered the impact of such related operational burdens on card issuers.

We do not believe that it is urgent to review or amend the Act today, we believe that in the future Congress should review and modify the Act so that it more appropriately reflects today's environment. ABA and CBA would be pleased to work with Congress if it elects to take action to modernize this law.

In closing, let me again reiterate that America's banks have always complied with this law and are gladly doing so today in regard to those personnel called to respond to the crisis in the Middle East.

We appreciate this opportunity to testify today and would be glad to answer any questions.

CONSUMER BANKERS ASSOCIATION
The Association for Retail Banks and Thrift Institutions

CBA Bank Alert

August 24, 1990

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940
(50 USC S 501 et. seq.)

The Act was passed in 1940 to suspend enforcement of certain civil liabilities of people in the military so they could "... devote their entire energy to the defense of the nation..." Its purpose was to ensure that service personnel did not return home to find his or her mortgage foreclosed, car repossessed, and life insurance cancelled.

Persons Covered

The Act applies to members of the Army, Navy, Marine Corps, Coast Guard and certain officers of the Public Health Department. Reservists and members of the Army and Air National Guard - on active duty - are covered.

Relief Provided

During the time of service, courts can stay default judgments against military personnel. Other court proceedings can also be stayed. Interest on debts - incurred prior to induction or call to active duty - is limited to six percent per year. The interest provision appears to be self executing. A debtor can ask for relief or the bank, upon other notice, can restructure loan. A lender can ask a court to determine that the rate in excess of six percent does not create a handicap.

In addition, options to terminate or rescind an installment contract or lease or options to repossess property cannot be exercised because of a default occurring prior to or during the military service unless Court action is taken.

Further Information

We are continuing to investigate the issue and will provide additional information as it becomes available.

The full text of the Act as amended with interpretative court decisions as well as a 1975 law review article are available on request from CBA. Please call Theresa Sauter at 703-276-1750. If you have any comments or questions please call Marcia Sullivan at the same number.

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CBA
CONSUMER BANKERS ASSOCIATION
The Association for Retail Banks and Thrift Institutions
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MEMORANDUM

TO: Persons interested in Soldiers' and Sailors' Relief Act
FROM: Marcia Sullivan
SUBJECT: Soldiers' and Sailors' Relief Act
Veterans' Reemployment Act
DATE: August 28, 1990

In response to your telephone calls, I have enclosed material - in a question and answer format - on the Soldiers' and Sailors' Relief Act. I have also included - FYI - questions and answers on the Veterans' Reemployment Rights Act. We are continuing to collect and analyze information on the issue. For questions and comments, please call Marcia Sullivan at 703-276-1750.

The paper was prepared by Lynne Barr, a member of the CBA's Lawyers Committee and a partner at Goodwin, Procter and Hoar.

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August 27, 1990

FEDERAL LAWS PROTECTING PERSONS IN MILITARY SERVICE

President Bush's call-up of reservists has raised many questions about the rights of lenders with respect to borrowers who are in military service and the employment rights of returning veterans.

There are two basic federal statutes that apply. The Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S. Code, Section 501) establishes protections for persons in military service with respect to their obligations and liabilities. The Veterans' Reemployment Rights Act (38 U.S. Code, Section 2021) addresses what rights employees who enter military service have with respect to reemployment on their return to civilian life.

The Question and Answer Outline set forth below covers key questions that currently are being asked about this subject. Two important factors must be kept in mind:

(1) The Question and Answer Outline is based on the current language of the the statutes. The growing national attention to these statutes is leading to further study by many who are affected. Policies are still being formulated. Suggestions have been made that the existing federal statutes need change. The Outline must, therefore, be considered as a preliminary source of information. It will be subject to change as further interpretations and policies are announced.

(2) There is a major question relating to those lenders that sell loans into the secondary market. The question is how Fannie Mae, Freddie Mac or other purchasers will treat the limitations imposed on lenders by the Soldiers' and Sailors' Civil Relief Act. We understand that Fannie Mae and Freddie Mac are planning policy announcements in this area later this week.

Questions may be referred to:

Henry B. Shepard, Jr., P.C. (617) 570-1515	Gordon H. Piper (617) 570-1471
Lynne B. Barr (617) 570-1610	Bradford J. Smith (617) 570-1256

GOODWIN, PROCTER & HOAR

QUESTIONS AND ANSWERS RELATING TO THE RIGHTS OF PERSONS IN MILITARY SERVICE

I. THE SOLDIERS AND SAILORS CIVIL RELIEF ACT OF 1940

Q: Do borrowers who are in the military service (or reservists who are called up for active military duty) have any special rights concerning their loans and other obligations?

A: Yes. A federal statute known as the Soldiers' and Sailors' Civil Relief Act of 1940 (the "Act") gives special protection and relief to those actively serving in the armed forces. Many of the provisions of the Act restrict a lender's rights to enforce loan obligations of persons in military service.

Q: Who is protected by the Soldiers' and Sailors' Civil Relief Act?

A: The Act applies to "persons in the military service." This includes all members of the armed forces on active duty, including those on leave, hospitalized and in training, as well as members of the reserves who have been called to active duty. In some cases, dependents are also protected. Sureties, guarantors, endorsers and similar parties, although not themselves in military service, may be able to get protection in the discretion of the court, if the person primarily liable on the loan is in military service and gets a protective court order.

The Act does not apply to reservists who are not in active duty, retired military personnel, or civilians working for the military.

Q: Does it make any difference whether the individual was called up from the reserves or enlisted voluntarily?

A: No. Both individuals have the protection of the Act.

Q: Are banks the only institutions whose rights are affected by the Act?

A: No. The Act affects the rights of lenders and creditors of every type.

Q: How does a lender find out if its borrower is in military service?

A: There is no provision in the Act which requires a borrower or the government to notify lenders. However, the Act establishes procedures for making inquiry to verify military status.

Q: Is it true that loan interest rates can be limited by the Act?

A: Yes. Under current provisions of the Act, a service person who incurred an obligation before he or she entered military service is entitled to have the annual interest rate limited to six percent, unless an exception applies.

Q: What are the exceptions?

A: The interest rate limitation only applies to obligations incurred before a person enters military service. It does not apply to obligations incurred while a person is in military service. In addition, if the creditor can show a court that the debtor's ability to pay a higher rate is not "materially affected" by reason of the debtor's military service, the interest rate limitation will not apply. However, the burden of proof is on the creditor.

Q: Does the interest rate limitation only apply to real estate mortgages?

A: No. It applies to any and all obligations and liabilities of the person in military service. For example, consumer loans, auto loans, student loans and credit card obligations all are included.

Q: What is included in "interest" for purposes of calculating the six percent rate?

A: Interest is deemed to include not only the basic interest rate but all service charges, renewal charges and other fees and charges, except bona fide insurance. Although the Act does not specifically list late charges, "interest" would probably be deemed to include them as well.

Q: Does the Act provide any compensation to the lender from the government to make up the difference between the actual rate and the six percent rate?

A: No. There is no such provision in the Act. Neither is there any provision automatically requiring a borrower to pay the difference after leaving military service. Fannie Mae and Freddie Mac have not yet announced their policies with respect to paying the difference between the actual rate and the six percent rate.

Q: If a borrower in military service defaults in paying principal or the reduced amount of interest, can the lender sue and get judgment against the borrower?

A: In general, a borrower may have a lawsuit stayed (not pursued) for a period that can continue until three months after his or her military service has ended.

Q: What happens to judicial attachments and garnishments obtained by a lender against a borrower in military service?

A: They can be vacated or stayed.

Q: Does the Act authorize a real estate borrower in military service to cease making property tax and casualty insurance escrow payments?

A: No. However, the Act may limit a lender's right to enforce its remedies in the event of such a default.

Q: Can a lender foreclose a mortgage against a borrower who is in military service?

A: Foreclosure or sale of the property can take place only after a court order if (a) the debt originated before the borrower entered military service, (b) the borrower was an owner of the mortgaged property before entering military service and (c) the borrower is still an owner of the mortgaged property.

Most Massachusetts banks already commonly follow the practice of obtaining a so-called "Soldiers' and Sailors' Judgment" before holding a real estate foreclosure sale. These judgments are obtained in the state courts following a procedure established by a special Massachusetts statute. However, if the borrower is entitled to the benefits of the Act, the court could prevent or delay the sale from taking place for as long as the borrower is in military service, and for three months thereafter.

Q: Do the same rules apply to repossession and secured-party sales of other collateral such as automobiles, equipment and marketable securities?

A: Yes. Under the Act repossession or sale of any collateral for non-payment can only be carried out after a court order. The court has the right to prevent or delay such a sale while the borrower is in military service, and for three months thereafter.

Similar protections are available to a person in military service who, prior to starting service, has entered into an installment contract or lease with purchase rights for real or personal property. To qualify, the service person must have made a deposit or paid an installment before starting military service.

Q: Are there other ways in which the Act can affect litigation involving persons in military service?

A: Yes. For example, if a court has entered a judgment against a person in military service, the Act allows the borrower to re-open the judgment. In addition, statutes of limitation are affected. The Act provides that the period of military service shall not be included in computing statutes of limitation which apply to lawsuits brought by or against persons in military service.

Q: Are there other interests of real estate lenders which are affected by the Act?

A: Yes. For example, in certain cases the Act restricts a landlord's right to evict residential tenants such as dependents of persons in military service. Persons entering active military service also have the right to terminate leases they signed prior to entering the military. This provision applies not only to residential leases but also to leases for professional, business and other specified purposes.

Q: Are there other interests of persons in military service that are protected by the Act?

A: Yes. The Act contains a number of other protections. These include protections relating to state and federal tax payments, contractual fines and penalties and life insurance policies.

Q: Is there any limitation on the protections provided by the Act?

A: Yes. In many cases, these protections are available only if the military service "materially affects" the service person's position. If a lender is able to prove that service in the military has no material effect on the service person's position, the relief afforded by the Act may be unavailable. If a court finds that an attempt is being made to use the Act in an inappropriate case, the court may decline to apply the protections of the Act.

II. VETERANS' REEMPLOYMENT RIGHTS ACT

Q: Do employees who enter active military duty have any special rights with respect to employment?

A: Yes. A federal statute known as the Veterans' Reemployment Rights Act (the "Act") gives special rights in certain areas while the employee is on active military duty and also on the employee's return to civilian life.

Q: What notice must an employee give his or her employer before entering upon active military duty?

A: Generally, an employee must act in good faith when requesting a military leave and notify his or her employer as early as possible of impending active military duty. However, if an employee gets little or no notice of a call to duty, or if for security reasons the employee must leave without notifying his or her employer, the employer may receive little or no notice.

Q: Must an employer return a person discharged from active duty to his or her same job?

A: As long as the employee is still qualified to perform the duties required of the employee's position, the employee must be returned to that position or to one of similar seniority, status and pay, unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so. Returning veterans who are disabled by reason of their military duty are entitled to special accommodation.

Q: Does an employee who voluntarily enlists for active duty have the same right of reemployment as a reservist who is called up involuntarily?

A: Yes. An employee who voluntarily enlists for active duty has the same rights of reemployment as a reservist who is involuntarily called to active duty.

Q: Do employees in temporary positions have the same rights of reemployment?

A: No. Only an employee in "other than a temporary position" has a right of reemployment. Under the law, if an employee has a reasonable expectation that his or her employment would be continuous and for an indefinite time, the employee has "other than a temporary position" and is entitled to reemployment.

Q: Does a regular part-time employee have a right of reemployment?

A: Yes. A regular part-time employee with a reasonable expectation of continued employment has a right to reemployment on the same basis that the employee would have had if he or she had not been on active military duty.

Q: Must an employer pay its employees while they are on active military duty?

A: The Act does not require such payments. The military pays its personnel on active duty, including reservists. However, some employers may have a policy or practice that would affect this issue.

Q: What benefits is an employee entitled to while on active military duty?

A: Persons on active duty receive complete medical coverage for themselves and their dependents from the armed forces. Whether an employee on military leave is entitled to continued benefits from his or her employer depends on the practices and policies of the employer. Of course, any continued coverage can be subject to the same restrictions that may apply to persons on similar leaves of absence, such as copayment of premiums. In addition, if there are benefits which the employer does not provide to employees who are on similar leaves, such benefits need not be provided to employees on military leaves.

Q: How long must an employer hold a job for an employee on active military duty?

A: At least four years, assuming the employee otherwise complies with the law.

Q: What if an employer has filled the employee's position while the employee is on active military duty?

A: Even if an employer has placed another employee into the position or hired a new employee, the employer must offer the returning employee his or her position or one of similar seniority, status and pay.

Q: When an employee is released from active duty, when must the employee report back to work?

A: An employee who enlisted for active duty and a reservist who has been on active duty for more than 90 days generally must apply for reemployment within 90 days after being released from active duty. A reservist who has been on active duty for 90 days or less generally must return to work within 31 days after being released from active duty.

Q: Might an employee be entitled to a promotion or pay increase which has accrued while he or she was on active military duty?

A: Congress has declared that employees shall be restored to their positions with the status they would have enjoyed if they had continued in their employment continuously without entering the armed forces. Thus, under certain circumstances a returning employee may claim a promotion or salary increase if it is reasonably certain that the employee would have received the promotion or salary increase if he or she had not been on active military duty.

Q: When may an employer discharge an employee who has returned to work from active duty?

A: If a reservist is on active duty for 90 days or less, he or she may not be discharged without cause within six months after returning to work. If an employee has been on active military duty for more than 90 days, the employee may not be discharged without cause within one year after his or her return to work.

August 27, 1990
YP-7654/M

AMERICAN BANKERS ASSOCIATION
1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

Office of the General Counsel
August 23, 1990

Soldiers' and Sailors' Civil Relief Act

Purpose

The Soldiers' and Sailors' Civil Relief Act (50 App. U.S.C. (501 *et seq*.) is a World War II era Act of Congress passed to protect the rights of servicemen and women while on active service. The Act is aimed at protecting Armed Forces members from enforcement of obligations they are unable to meet because of being absent from their homes on active service or because their military pay won't cover the debts they incurred before active service based on their civilian earnings. The Act does not automatically suspend obligations of everyone on active service. This fact sheet will concentrate on application of the Act to the credit relationships of members of the Armed Forces on active service; it's also worth noting that the Act covers leases, mortgages, and general obligations to answer civil suits.

Who is Covered

The Act applies to persons on active duty in the military service, which includes full-time members of the Army, Navy, Air Force, Marines, Coast Guard, and Public Health Service. It also applies to members of Reserve and National Guard units who have commenced active service, whether by volunteering or pursuant to a call-up through regular channels. The Act takes effect from the time a person is ordered to report for duty.

Material Effect

The Act is designed to protect the rights of people on active service because of the burdens active service imposes. The most straightforward case for application of the Act occurs where a person leaves a civilian job for active military service at a much lower rate of pay or where a person's physical absence from his regular domicile prevents him from defending his rights in court. In each of these cases, the serviceman or woman is likely to suffer a significant material effect on their ability to manage their affairs. But if there is no material effect on a serviceman's ability, there is no basis for invoking the Act. Thus, if the switch from civilian to military pay and benefits constitutes an increase in a person's resources, or if he or she is not removed from the area in which they normally live, a mere entry into active duty would be unlikely to create a circumstance qualifying for relief under the Act.

When the Act Applies to a Debt

The Act covers debt obligations of persons in active service made before the beginning of active service, and it only applies where active service materially affects the debtor's ability to meet his or her debt obligations. When such a condition arises, a debtor may request that the contract rate of interest be reduced to 6%. Conversely, a member of the Armed Services who is not adversely affected by entry into active service may not expect to have pre-active service debts reduced to 6%.

The reduction to 6% applies during the period of active service; following that period, the interest rate reverts to its pre-active service interest rate.

Conclusion

Many detailed questions remain about operation of the Act, and many of the more technical or complex aspects of the Act have not been addressed in this memo. One reason for a lack of comprehensive answers about the Act is that much of it has only a very limited litigation history. Some portions have not been interpreted by courts, and many detailed issues have not been examined under provisions of the Act.

ABA will continue to research the Act and to share information on it as our understanding of the Act becomes more complete. In the meantime, the following sets of questions and answers should prove useful. If you need more information, please contact Irv Warden ((202) 663-5027) or Mathew Street ((202) 633-0531) at the General Counsel's Office at ABA.

Q. How does the Act affect loans which an Armed Forces member took out prior to entering active duty?

A: Loans which the service member took out prior to entering active duty may be limited to an interest rate of six percent while the member is on active duty. Typically, this occurs as a result of a request made by the borrower to reduce the rate, based on operation of the Act. For the purposes of this section of the Act, the term interest includes all fees and charges except "bona fide insurance."

Q: Does the lender have any opportunity to collect interest at greater than 6% while the service member is on active duty?

A: The Act provides that a lender may apply to a court for an order allowing it to collect more than six percent interest on a loan covered by this provision. In order to issue such an order, the court must find that the ability of the service member to pay more than six percent interest is "not materially affected by reason of such service." The term "court" is defined by the Act to include "any court of competent jurisdiction of the United States or of any State, whether or not a court of record." However, the lender's court action seeking authority to charge more than six percent interest may be postponed under the provisions of the Act staying civil proceedings.

Q: What happens to the interest rate on loans affected by this provision of the Act after the service member is released from active duty?

A: The loan reverts to the contract rate of interest after the service member is released from active duty.

Q: Does the Act have any effect on foreclosures or repossessions of real or personal property which is subject to a mortgage or other secured loan?

A: If a service member has a mortgage or other secured loan which originated prior to entry into active duty, no foreclosure or repossession can be made on the property during the period of active duty without a court order. In any legal proceeding arising out of such an obligation the court shall either stay the proceeding or make another disposition of the case which preserves the rights of the parties, unless the court finds that the service member's active duty does not materially affect the ability of the defendant to comply with the terms of the obligations.

AMERICAN
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Office of the General Counsel
September 6, 1990

UPDATE ON THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

As a follow-up to our recent memo on the Act, this update summarizes a few of the salient points that have become more clear since the issue first arose. As additional answers to these and other questions become available, we will pass them on to you. In the meantime, the following points may be useful.

House Schedules Oversight Hearings

We learned last week that the House Veterans' Affairs Committee, chaired by Rep. G.V. (Sonny) Montgomery (D-MS), will hold oversight hearings on operation of the Act on September 12. The hearings will focus on issues raised by application of the Act to the present deployment in Arabia of members of the Armed Forces and Reserve and National Guard components. ABA will offer testimony, but that testimony will discuss the sorts of issues bankers have raised in their questions to us rather than propose amendments to the Act. Of all the bankers who have called, none has suggested an unwillingness to accommodate servicemen and women affected by the deployment, and ABA will emphasize bankers' commitments to support Americans affected by the current crisis.

6% Rate--Interest Lost by Reducing Rate Not Recoverable

Though our research has been unable to discover a *per se* statement that the interest rate differential between 6% and the contracted-for rate on a loan to an affected serviceman or woman may not be recovered, it is now our conclusion that that differential is in fact not eventually recoverable.

We draw this conclusion from our reading of all the discussions we have seen on operation of section 206 of the Act (50 App. USCA 526). As we said in our earlier memo, there is little litigation history or other published guidance to draw on. However, comments we have seen lead us to conclude that the interest above 6% not collected during a customer's period of active service is gone and cannot be recovered. Among those commenting are Fannie Mae and Freddie Mac.

In a press release and accompanying statement dated August 30, 1990, Fannie Mae said it would "absorb forgiven interest income on mortgages it holds or guarantees for reservists called to duty . . . The difference between the reduced interest rate and the actual mortgage interest rate is forgiven and cannot be collected." Freddie Mac's August 30, 1990, press release said, "The difference between the mortgage interest rate and the six percent allowed by the Act is totally forgiven, not deferred during the eligible period." We believe it is likely that this view now will prevail among those concerned with the 6% interest issue.

For copies of these materials, please call Tom Marder at Fannie Mae at (202) 752-7608 or Nancy Condon at Freddie Mac at (703) 759-8506 or call Irv Warden or Mathew Street at the ABA.

Exception--Guaranteed Student Loans

An August 29, 1990 memo from the U.S. Department of Education's Division of Policy and Program Development discusses an exception to the 6% rule. After stating that DOE will permit a lender to forbear payments for up to six months, the memo goes on to cite 20 U.S.C. 1078(d) for the proposition that a guaranteed student loan borrower's interest rate "is not affected by the provision of the Soldiers' and Sailors' Civil Relief Act of 1940 restricting interest charged to certain borrowers in military service." This conclusion is based on Section 1078(d) (Section 428(d) of the Higher Education Act of 1965), which states that no provision of any law which limits the interest rate on a loan shall apply to the guaranteed student loan programs. Please note, however, that other forms of relief may be available to student loan borrowers under provisions of the Acts.

Conclusion

As we learn more about the Act and its implications we will forward additional information. As before, please feel free to contact Irv Warden at (202) 663-5027 and Mathew Street at (202) 663-5031 with your questions.

STATEMENT OF

LYLE E. GRAMLEY

SENIOR STAFF VICE PRESIDENT & CHIEF ECONOMIST
MORTGAGE BANKERS ASSOCIATION OF AMERICA

Mr. Chairmen and Members of the Committees, my name is Lyle E. Gramley. I am appearing before you today as Senior Staff Vice President and Chief Economist of the Mortgage Bankers Association of America (MBA).[*]

MBA appreciates the opportunity to testify at these hearings dealing with the effect that provisions of the Soldiers' and Sailors' Civil Relief Act (SSCRA) will have on real estate finance.

My testimony will explore some of the aspects and problems raised by the application of a 1940 statute to the considerably changed mortgage finance world of today. In all candor, MBA does not have answers to the many questions posed by the Act. But by focusing on some of the salient points, we may be of assistance in helping you arrive at appropriate and equitable solutions.

The Act was passed in 1940, prior to our entry into World War II, and was amended in 1942. The 1942 amendment contains the interest rate provision that is the subject of these hearings.

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[*] The Mortgage Bankers Association of America is a nationwide organization devoted exclusively to the field of residential and commercial real estate finance. MBA's membership comprises nearly 2,600 mortgage originators and servicers, as well as investors, and a wide variety of mortgage industry-related firms. Mortgage banking firms, which make up the largest portion of the total membership, engage directly in originating, selling, and servicing real estate investment portfolios.

Members of MBA include:

- Mortgage Banking Companies
- Commercial Banks
- Mutual Savings Banks
- Savings and Loan Associations
- Mortgage Insurance Companies
- Life Insurance Companies
- Mortgage Brokers
- Title Companies
- State Housing Agencies
- Investment Bankers
- Real Estate Investment Trusts

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The purpose of the Act was to suspend enforcement of civil liabilities of service personnel so that they could devote their entire energy to defending the Nation. The 1942 amendment--Section 206 (50 U.S.C. Sec. 526)--provides that no obligation or liability incurred prior to an individual's call to active service shall bear interest in excess of 6 percent during the period of active service. This provision applies unless, in a court's opinion, active service does not materially affect a borrower's ability to meet his or her debt obligations.

When the 1942 Amendment to the Act was passed, interest rates were dramatically lower than they are today. For example, the yield on 3-month Treasury bills was just 0.3 percent in 1942, compared with approximately 7 1/2 percent today. The FHA mortgage rate in 1942 was 4 1/2 percent, compared with 10 percent today. I would infer that, in setting a ceiling interest rate of 6 percent in the 1942 amendment, the chief concern of Congress was not with the burden of mortgage interest, but with interest on consumer loans.

At today's interest rates, the 6 percent ceiling would apply to all mortgage loans of any reservist whose financial position was materially affected by the call-up. Who absorbs the losses resulting from the ceiling will vary with the type of loan. In roughly two-thirds of the cases, the ultimate mortgage lender--perhaps a commercial bank or a thrift institution--would lose approximately one-third or a little more of the expected interest income on affected mortgage loans. For mortgage pools, the loss would be handled differently. About one-third of all outstanding one- to four-family mortgages are held in such pools, and two-thirds to three-fourths of the mortgage loans originated in recent years are in them. In this case, the ultimate lender holds a security issued by the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), or the Government National Mortgage Association (Ginnie Mae). The ultimate lender in these cases will not lose interest income because payment to the security holder is guaranteed by the agency issuing the security.

FNMA and FHLMC have announced that they will absorb the losses resulting from the application of the 6 percent cap to loans which back their mortgage-backed securities. GNMA, however, has announced that, with respect to its securities, backed by FHA and VA loans, losses resulting from the application of the 6 percent cap must be absorbed by the mortgage servicer.

During the past five years, a mortgage banker's net income from servicing has amounted to about one-eighth of one percent of the loan being serviced. If a mortgage servicer were required to pay the interest in excess of 6 percent, the servicer's contribution for any time period would amount to 25 to 30 times the net income earned from servicing the loan during that time period. The 1942 Amendment to the Act could not, of course, have contemplated such a burden, because mortgage pools did not exist at that time.

The mortgage banking industry would be particularly hard hit by the interest rate provision of the Act. Approximately three-fourths of FHA and VA loans are originated and serviced by mortgage bankers. The Economics Department of the Mortgage Bankers Association of America has tried to estimate what the interest rate provision of the Act might cost the mortgage banking industry. The estimate is necessarily rough, since we do not know precisely how many reservists are home owners, how many of these have FHA/VA mortgages outstanding, or the exact interest rate on the mortgages involved. Our best judgment, however, is that if all of the 50,000 reservists, currently expected to be called up, who are home owners were eligible for relief under the Act, the cost to the mortgage banking industry would be about $15 million at an annual rate. What is perhaps most disturbing about the impact, is its random incidence. Some mortgage lenders may be heavily affected, and others not at all.

The incidence of the Act in dealing with the financial burdens of reservists is also selective. Home owners get assistance, but renters do not, except with stays on evictions. Home owners with large mortgages get more assistance than those with small ones; reservists with financial problems in areas other than borrowing receive no help at all.

Although I am not a lawyer, what I have read about the Act suggests that its language, if not clarified, might give rise to legal problems in determining who is eligible for assistance under the Act.

The 1940 Act provided relief to service personnel "materially affected" by their military service from complying with financial obligations. The 1942 amendment provided that the relief applied only when the ability to meet the financial obligations "has been impaired." Under this provision, if a creditor seeks to enforce an obligation, there must be a determination of whether the service person's ability to comply has been affected materially, and whether the individual's ability to defend an action or to comply with a judgment successfully obtained by a creditor has been impaired.

Neither subsequent legislation nor court decisions have shed much light on what "materially affects" or "impairs" the ability of borrowers to meet their financial obligations.

As Congress reconsiders the Act, we would urge that consideration be given to clarifying what constitutes "materially affected" and "impairment" of the ability to meet financial obligations. This could assist the reservists called to active duty in determining what their financial obligations are and would help lenders in gauging their financial obligations under the Act. The Act should clarify the procedure to be followed by both reservists called to active duty and affected lenders.

For your information, attached to the testimony is an August 28 letter and fact sheet sent by MBA President Ronnie J. Wynn to all MBA members, urging awareness of the Act's existence and describing its provisions.

Attachment to MBA testimony, Joint House
Senate VA Hearings, September 12, 1990, on SSCRA.

Letter to Members

Mortgage Bankers
Association of America

1125 Fifteenth Street, N.W.
Washington, D.C. 20005
202-861-6500

August 28, 1990

Dear Member:

If you are in the loan administration business and have not yet heard of the Soldiers' and Sailors' Civil Relief Act of 1940, I suggest that you have your lawyer get a copy and review its provisions. Now that President Bush has called members of the Reserves to active duty, many of us will be affected by this legislation.

Enclosed is a Fact Sheet, prepared by MBA, which may be of help to you in understanding the Act.

The basic purpose of the legislation, which was passed in 1940, was to assist "persons in the military service" by making provisions "to suspend enforcement of civil liabilities." The Act generally applies to active duty personnel whose ability to appear and take part in court proceedings or to meet their financial and other obligations incurred prior to active military service is impaired by reason of their military service. In the current situation, we will most likely be concerned with reservists and public health officials who are being called to active duty.

Although there are a number of sections of the Act which may apply to mortgages and to mortgage servicers, a key provision prohibits the foreclosure or seizure of property for nonpayment of any amount due while the person is in the military service (or within three months there after) without first obtaining the approval of a court. Another key section for lenders provides that, for mortgages incurred prior to active service, the loan may not "bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation...at a rate in excess of 6 per centum per annum is not materially affected by reason of such service...." (50 USCA app 526).

As expressed in a U.S. Army handbook, "A central equitable concept, expressed in slightly varying statutory language, is embodied in all the Act's provisions. It is the concept of "material effect." Trial courts are required to form an opinion in each case considered of the extent to which the serviceman's (or servicewoman's) military service has materially affected his (or her) particular situation. After this crucial determination has been made,...the court may proceed with or stay the case."

Thus, a non-judicial foreclosure is prohibited but a judicial foreclosure or other process may or may not appropriately proceed depending upon the court's resolution of whether or not the service person's ability to comply with his/her obligations has been "materially affected" by being called to active military service. Under the Act, this decision does not ultimately rest with the lender.

Many questions arise from the section providing for a reduction of interest to 6 percent while the service person is called to active duty. We at MBA have been discussing the provisions of the Act with FHA, VA, GNMA, Fannie Mae and Freddie Mac. Each of these agencies is aware of the Act and has indicated that they are reviewing their requirements and will be issuing further instructions soon.

While still not clear, the interest limit section may require lenders to reduce interest without either notice from the borrower beyond a borrower's failure to make full scheduled payments or a demonstration by the borrower of adverse material affect. However, as with other sections of the Act, the section provides that lenders may seek a court determination whether mobilization has materially affected the borrower's ability to pay a rate in excess of 6 percent. It would certainly seem that a mutual, cooperative communication regarding the borrower's current financial information would be helpful to resolving early whether a lender would seek such a determination from the courts.

In this period of national emergency, we are all being called upon to do our fair share in supporting our government. Many young men and women are being sent to the Middle East, many others are being asked to leave their homes to support those sent overseas. We need to be understanding of their situation and the difficulty they might have in meeting their financial obligations. I suggest that we all do as much as we can to work with these men and women and their families to develop payment plans which they can afford during their active duty service and repayment plans which will not be too burdensome once they return home.

Sincerely,

Ronnie J. Wynn, CMB

Enclosure

August 28, 1990

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940
50 U.S.C.A., app. 501-591 (West 1981)

PURPOSE: "In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation..." Section 510.

PERSON(S) IN MILITARY SERVICE: "The term "person in the military service", . . . shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy." Section 511(1).
{At the time the Act was enacted, the Air Corps was part of the Army, so the current United States Air Force would be included by implication, as well as the reserve forces of each of the above branches.}

MILITARY SERVICE: "The term "military service",. . .shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause." Section 511(1).

PERIOD OF SERVICE COVERED: "The term "period of military service", . . .shall include the time between the following dates: . . .for persons entering active service after the date of this Act {Oct. 17, 1940}, with the date of entering active service. It shall terminate with the date of discharge from active service or death while in active service. . ." Section 511(2).

APPLICABILITY: The Act applies to military service persons whose ability to meet financial and other obligations (incurred prior to military service) is impaired by reason of military service. In the current situation, the service persons most likely to benefit from this provision will be reservists and public health officers who are being called to active duty. There have been several cases that support the fact that Section 501 is exclusively for the benefit of servicemen and they alone can take advantage of the Act and then only upon showing that their interest has been affected.

MAXIMUM RATE OF INTEREST: Section 526 provides that "{n}o obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service . . . bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the {creditor}, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service . . . The term "interest" includes service charges, renewal charges, fees, or other charges (except bona fide insurance) in respect of the obligation or liability."

Few cases have been brought under this section to date. However, the section could potentially offer considerable relief in today's higher interest rate environment.

Key to a granting of relief under this section is the requirement that the creditor show that the service person's position is "not materially affected" by military service. In this context, the trial court will consider whether the service person can meet his/her financial obligations.

MORTGAGES, TRUST DEEDS, ETC.: Section 532 applies only to obligations secured by a mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the start of the period of military service.

The section further provides that in any lawsuit brought in any court during the period of military service to enforce obligations arising out of nonpayment of any sum due under the obligation or out of any other breach of the terms occurring prior to or during the period of such service the court may on its own motion or shall after application to it by the service person or a person on his/her behalf, (a) stay the proceedings, or (b) make such other disposition of the case as may be equitable to conserve the interests of all parties. The court will take the above action unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of the military service.

In addition, no sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid during the period of military service or within three months' thereafter, except pursuant to an agreement between the creditor and service person, unless upon an order previously granted by the court and a return thereto made and approved by the court.

Any person who knowingly makes or causes to be made any sale, foreclosure, or seizure of property defined as invalid, or attempts to do so, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000 or both.

Again, there must be a showing that the service person's ability to comply with his/her obligations has not been "materially affected" by the military service. In the context of this section, the court would consider, along with the ability to pay the obligations, the ability to protect legal rights (e.g., against foreclosure). Although the provision seems to put the burden of proof on the creditor to show that the service person was not materially affected, in actuality the courts have assigned the burden to either party under this section.

In a foreclosure action by a mortgage association under power of sale against a mortgagor in the service, the court stayed the foreclosure, concluding that the fact that he had not made mortgage payments for nine months, by itself, was not enough to deprive him of relief from foreclosure under the Act, even though he was in default when he entered the service. Federal National Mortgage Association, 136 F. Supp. 859 (E.D. Mich. 1956). The Act will be construed with "an eye friendly to those who dropped their affairs to answer their country's call." *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

HUD REQUIREMENTS: 24 CFR 203.345, 203.346 provide two special relief measures for persons called to active military service. One provision provides that the lender may, by written agreement, postpone part or all of the monthly P&I payment for the period of military service and for three months thereafter. The other provision excludes, for loans in default, the period of military service from the one year period during which the lender must commence foreclosure or acquire the property by other means. HUD Handbook 4330.1, Paragraph 124, discusses forbearance relief provisions for service persons.

GNMA REQUIREMENTS: The GNMA Guide does not appear to address this situation.

FHLMC REQUIREMENTS: Section 6514 authorizes the servicer to grant appropriate relief to an eligible borrower. If interest reduction is required, the servicer must request Freddie Mac's approval by submitting a recommendation detailing the relevant facts. Servicers must contact the borrower at least semiannually during the period of active military service to determine whether the reduction in monthly payments should be revised in view of the borrower's current financial ability.

FNMA REQUIREMENTS: Sections II, 102.05 and IV, 401.04,05 authorize the servicer to grant military indulgence for eligible borrowers.

Fannie Mae and Freddie Mac have indicated that they are reviewing their requirements and will issue a notice on the Act soon.

VA: The Department of Veteran Affairs has prepared a circular to address the Act. It will be distributed to lenders by local VA Offices. The circular makes it clear that "VA is not charged with enforcement of the Act, but will perform its mission of serving veterans by making every effort to ensure that they receive the protections to which they are entitled. Moreover, it is not VA's responsibility to provide legal advice to veterans or loan holders with respect to requirements of the Act." Concerning the six percent interest rate limitation, the circular states that "the Act is silent as to any actions which the veteran must take to begin payments at the lower rate. Absent a specific requirement, veterans (or their spouses, other co-obligors or legal representatives) should, however, be encouraged to notify their loan holder before beginning payments at the reduced rate. Veterans should also be encouraged to co-operate with their loan holders by providing information which will help demonstrate their eligibility for benefits available under the Act. Loan holders are cautioned to review their payment processing procedures in order to ensure that payments in the amount allowable under the Act are not inappropriately returned to borrowers as insufficient, even though no prior notice may have been received. Loan holders should also be prepared to respond to inquiries from veterans as to the amount of the monthly installment payment which would be required at a 6 percent interest rate and to provide revised payment cards or coupon books when appropriate..."

CONCLUSION

MBA is working with the various organizations on interpretation of the Act particularly on how pass-through securities will be affected. For additional information contact Shelia Green (861-3135), Staff Representative to the Loan Administration Committee and Janet Badger (261-6547), Staff Representative to the Regulatory Compliance Committee. Servicers are encouraged to refer to their legal counsel for interpretations of particular provisions.

STATEMENT OF

JUDITH A. KENNEDY
VICE PRESIDENT, GOVERNMENT AFFAIRS
FEDERAL HOME LOAN MORTGAGE CORPORATION

BEFORE THE

JOINT COMMITTEE ON VETERANS' AFFAIRS

HEARINGS ON SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AND
VETERANS REEMPLOYMENT RIGHTS

SEPTEMBER 12, 1990

Chairmen Montgomery and Cranston, and members of this joint Veterans Affairs Committee: my name is Judith A. Kennedy, and I am Vice President of Government Affairs for the Federal Home Loan Mortgage Corporation, better known as "Freddie Mac". I greatly appreciate this opportunity to appear before you today to discuss the Soldiers' and Sailors' Civil Relief Act.

Freddie Mac is proud to play a role in providing relief to service members called into duty during this current crisis. We have always been guided by a very simple principle: just as no borrower wants to lose his or her home to foreclosure, no lender or investor wants to own it by default. Accordingly, our on-going forbearance policies will be available for service members unable to maintain normal monthly mortgage payments. Additionally, Freddie Mac recently announced that we will absorb the interest rate reduction required by the Act for eligible service members who have mortgages we own. We also will provide other relief as specified in the Act.

I would like to begin my testimony by briefly acquainting you with Freddie Mac. Then, I will outline what we are doing to comply with the Act and how it is likely to affect us. Finally, I will offer some suggestions for updating the Act.

Background

Freddie Mac was created by Congress in 1970 to increase the availability and affordability of conventional mortgage funds for homebuyers. Congress envisioned a nationwide system in which mortgage credit would be equally available in all areas and regions of the country. To make this vision a reality, Freddie Mac was given the specific task of creating and maintaining a national secondary market for conventional mortgages. We have successfully carried out this mandate without federal appropriations, budget authority, or taxpayer dollars. Our work is financed solely by private sources, such as pension funds, insurance companies, and other institutional and individual investors.

Freddie Mac purchases investment-quality mortgages from lending institutions, thereby replenishing their supply of funds to lend to other homebuyers. Then, we sell securities backed by these mortgages to private investors. This in turn provides us with additional funds to use in purchasing more mortgages from lenders, thereby starting the cycle all over again. In this way Freddie Mac has forged a link between the private capital markets and the local mortgage lending markets. This ensures that lenders and borrowers in all regions of the country have equal access to funds at the lowest possible cost.

In the last twenty years we have purchased nearly $500 billion in home mortgages throughout the nation, representing one in eight American homes and 750,000 apartment units.

Our most significant challenge has been to fulfill our housing mission while at the same time managing the risks associated with home mortgage lending. By developing standardized underwriting guidelines and sound mortgage servicing standards, we have helped increase homeownership and decrease the number of mortgage defaults.

Freddie Mac has always made every reasonable effort to work out solutions for borrowers other than foreclosure. Indeed, we permit a foreclosure action to take place only when there is no reasonable expectation that the borrower can bring his or her mortgage current. To the maximum extent possible, our forbearance guidelines help borrowers restore their delinquent mortgage payments to current status so as to maintain them in their homes.

In cases of natural disaster, Freddie Mac arranges even more extended forbearance plans. When the Carolinas were struck by Hurricane Hugo and California suffered a severe earthquake last year, we allowed affected borrowers to temporarily suspend mortgage payments, reduce payment amounts, and arrange special repayment plans.

In these cases, as well as under Freddie Mac's ongoing forbearance guidelines, borrowers have always repaid the full amount of deferred interest owed. In contrast, the Act requires us to forgive the difference between the eligible borrowers' current interest rates and the six percent maximum. This presented us with some rather significant issues to resolve.

Freddie Mac's Compliance with the Act

In order to comply with this Act, we faced two basic questions: first, would the financial losses resulting from the statutory reduction in interest rates be material? Second, how could we best implement the law's provisions?

There was never any question that Freddie Mac would have to absorb the lost interest income. We stand behind our guarantees to investors in our mortgage-backed securities to pass through the interest and principal payments on the mortgages underlying these securities. More than anything else, investor confidence in our securities enables us to continue fulfilling our housing mission. Should that confidence be weakened, it could endanger our ability to ensure a continued flow of affordable home mortgage credit to America's homebuyers.

Over the past few weeks, our efforts have been focused on outlining simple guidelines for the over 3000 lending institutions -- or "Servicers" -- that service the mortgages we purchase. These guidelines should be available by the end of next week. We want to make the processing of service members' requests for interest reduction and, if requested, forbearance as quick and painless as possible. We intend to rely heavily on the integrity of eligible service members.

As I mentioned in the introduction to my testimony, Freddie Mac will also work closely with our Mortgage Servicers to consider providing additional relief beyond our normal forbearance provisions as necessary.

Freddie Mac's Comments on the Act

Given the enormous changes that have taken place in our financial system since 1940, we believe the Act should be re-examined with the goal of updating its provisions.

Specifically, we offer these questions for your consideration:

1. Is the six percent interest rate cap realistic in today's market environment? Average rates in 1940 were four to five percent. It appears Congress imposed the six percent maximum level to protect service members from having to pay higher than normal rates. Likewise, Congress probably did not intend lenders to absorb substantial interest losses, which compliance with the Act could require. We recommend a thorough review of the contemporary application of this Act and congressional objectives.

2. How are lenders to determine when relief is truly needed? The Act requires lenders to provide relief unless they can prove in court that military service has not "materially affected" the borrower's ability to meet debt obligations. We recommend amending the Act to provide lenders with a working definition of "material effect".

3. Who is responsible for informing service members of their rights under this Act? Because lenders are likely not to know which borrowers might qualify, we recommend assigning responsibility to the Defense Department or another appropriate agency.

4. How will a lender know when a borrower's military service has ended? The agency assigned responsibility for informing service members of their rights under the Act should also be required to notify lenders when borrowers have been discharged from active duty.

Conclusion

Chairmen Montgomery and Cranston, I want to again thank you and this joint committee for the opportunity to discuss the Soldiers' and Sailors' Relief Act. Members of our armed forces today are halfway across the globe placing their lives at risk for our nation. Freddie Mac believes they deserve every consideration from their creditors in recognition of their service. As I have explained today, we are doing everything we can to ensure they receive the relief due them under this law as well as our own forbearance policies.

While we believe that providing the interest rate reductions required by this Act will not have a material effect, the duration of our military commitment and the ultimate numbers of service members called will be the determining factors. We will keep Congress apprised of any circumstances which could affect our congressional mission.

~~I would be pleased to answer any questions you may have.~~

HENRY B. GONZALEZ
Chairman, Subcommittee on Housing and Community Development

WRITTEN TESTIMONY SUBMITTED TO THE JOINT VETERANS COMMITTEES
Hearing on
The Soldiers and Sailors Civil Relief Act of 1940

September 12, 1990

Chairman Montgomery, Senator Cranston, and other distinguished members of the Committee, I commend you for holding this joint hearing on the important issue of ensuring that our servicemen and servicewomen are protected financially while they are serving our country. It is vital that people risking life and limb know that Congress is behind them with material support as well as expressions of confidence.

In line with these efforts, I have introduced the Homeownership Protection Act of 1990 (H.R. 5559). My bill would provide protection against the loss of homes, and would provide financial stability, for servicepersons, and their families, who have been killed or seriously injured in the line of duty. These provisions are designed to complement The Soldiers and Sailors Civil Relief Act of 1940 which provides assistance to members of the Armed Forces who have been called to service by reducing their interest payments on debts acquired prior to such service to 6 percent when necessary to prevent default and foreclosure. I want to ensure that in circumstances more dire, the member and family are provided for.

The Homeownership Protection Act of 1990 recognizes that many servicepersons may be the primary wage earner in their household, and that a drop in income caused by death or serious injury could pose a serious financial hardship. Therefore, in order to prevent foreclosures on their homes, my bill would provide assistance for mortgage payments of members of the Armed Forces, or their families, who are killed or are seriously injured while serving their Nation.

Specifically, this bill provides monthly payments on behalf of any member of the Armed Services for a 2 year period beginning upon the death or serious injury of the member. After the end of this 2 year period, supplemental assistance payments would be available to ensure that the serviceperson, or their families, will not lose their home because of continuing financial distress as a result of such death or injury.

Supplemental assistance payments would assure that the household of the member of the Armed Forces is safeguarded from paying more than 30 percent of their household's monthly income for housing. This 30 percent determination is consistent with what Congress has determined for other assistance programs, as reasonable household payment for housing without causing undue burdens.

My bill, together with the efforts of this Committee and others, will go far in showing our respect and gratitude for those who put their lives on the line for our Nation.

STATEMENT OF REPRESENTATIVE PATRICIA SCHROEDER
on
THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT
before the
COMMITTEE ON VETERANS' AFFAIRS
September 12, 1990

Thank you for the opportunity to testify on the Soldiers' and Sailors' Civil Relief Act (SSCRA), the nearly-forgotten 1940 law that we're dusting off and rereading, as we consider how to mitigate the disruption of the lives and families of thousands of active duty and reserve personnel. Though current law extensively covers veterans' reemployment rights, next to nothing has been done to bring the SSCRA's debt protection into the 1990's or even the 1970's, for that matter.

For example, the rental debt provisions that prohibit a servicemember's family from being evicted were last amended in 1966, and they only cover housing that rents for $150 or less per month. In today's rental market, this protects virtually no one. This figure not only needs to be updated to reflect changing housing conditions and inflation, but should be annually indexed using the Consumer Price Index or some other adjustment mechanism.

I am also concerned with the cap placed on special pay for health care professionals on active duty for less than one year. A reservist ordered to active duty is paid merely $5,400 per year versus $40,000 for personnel with similar training and experience who have been on active duty more than a year. This cap may seriously jeopardize the financial security of almost all the medical personnel stationed in the Persian Gulf.

Many physicians face the additional challenge of paying malpractice insurance premiums that range from $6,000 to $120,000 per year, while they serve their country.

Malpractice insurance was virtually unheard of in 1940, but it is a virtual necessity in the medical world of the 1990's. Physicians are now faced with premiums that are substantially higher than their military pay. We should consider perhaps suspending the filing of malpractice claims against an individual during periods of active duty or an offset or reimbursement for the cost of keeping existing liability coverage.

The six percent interest limit on financial obligations incurred before entering active duty military service is perhaps another number from the past that should be pulled into the nineties. But an increase on the maximum rate of interest in SSCRA still does not answer the most basic questions: Is the unpaid interest forgiven--as Fannie Mae and Freddie Mac have so graciously offered--or merely postponed until after completion of military service? Is the interest rate compound or simple interest? And how will this affect individuals' credit histories? There is no credit protection for those who use the law's provisions because credit use and protection were far less important in 1940 than today.

Many private sector employers have responded to their employees' call for leave by continuing their and their families' health care and insurance plans, and many have offered differential pay to make up for lost wages. But under present law, civilian employers can terminate medical coverage for reservists and their dependents when the employee is called to active duty. And even when servicemembers are reemployed, there are no guidelines for resuming health care coverage.

The call to defend one's country should not leave servicemembers and their families at the mercy of individual employers, creditors, or financial institutions. As with the Family and Medical Leave Act passed by Congress earlier this year, in times of national or personal emergency, Americans should not have to sacrifice their financial security. I believe we need to provide a baseline of security, as has always been the intention of SSCRA.

My final and perhaps greatest concern with SSCRA is that there is no enforcement mechanism. What happens to someone who violates a provision of the law? What are the penalties associated with the violation?

SSCRA certainly needs revision, but I would also encourage the Veterans Administration to continue educating the public by distributing its publication, Order to Active Duty: What Now?, as well as its toll-free query number for reservists and their families. We need to make sure that every American understands the SSCRA.

STATEMENT OF
THOMAS J. HUGHES

PRESIDENT
and
CHIEF EXECUTIVE OFFICER
of
NAVY FEDERAL CREDIT UNION

and

TREASURER OF THE NATIONAL ASSOCIATION
OF FEDERAL CREDIT UNIONS

before

THE JOINT COMMITTEE
ON
VETERANS' AFFAIRS

on

THE SOLDIERS' AND SAILORS'
CIVIL RELIEF ACT

WEDNESDAY

12 SEPTEMBER 1990

Mr. Chairman and members of the Joint Committee. I am Tom Hughes, President and Chief Executive Officer of the Navy Federal Credit Union in Vienna, Virginia. I also serve as Treasurer of the National Association of Federal Credit Unions (NAFCU), the national organization exclusively representing the interests of credit unions chartered by the federal government. I appreciate the opportunity to participate in the current discussion on the Soldiers' and Sailors' Civil Relief Act, an act which is providing a valuable and comforting means of adjustment to our many reservists impacted by the current Middle East crisis. While I believe that nothing substantive should be enacted at present to update the legislation -- particularly while our service personnel are coping with the personal disruptions and the emotional and physical rigors of today's emergency--I do believe certain changes in the act should be made once the current crisis is resolved.

A great deal has changed in the 50 years that have elapsed since the Soldiers and Sailors Civil Relief Act was initially enacted in 1940. At that time credit cards and home equity lines of credit were hardly contemplated, and dual income households were very much the exception rather than the rule. Accordingly, a review of the provisions of this law seems to be most appropriate, in the light of changed circumstances. However, we would caution against any precipitous change in the law until the conflict in the Persian Gulf is resolved and the lives of our nation's military personnel have returned to a peace-time routine. To assist the members of the Joint Committee, I would like to share with you our experience at Navy Federal Credit Union in operating under the provisions of the Soldiers and Sailors Civil Relief Act.

Our membership shares the distinctive occupational common bond of seagoing forces of the Department of Defense -- the officers, sailors and marines, and supporting civilian personnel of the Department of the Navy. Over 95 percent of our members are now, or were at the time they joined Navy Federal, Navy and Marine Corps military personnel or federal civilian employees, or members of their families.

Within our occupational common bond, we operate under a specific and restricted field of membership, as approved by the National Credit Union Administration. All active duty Navy and Marine Corps officer personnel are included in our field, and we serve enlisted personnel, federal civilian employees, and members of the inactive and selected reserve units of the Department of the Navy in designated geographical areas as defined by the National Credit Union Administration in our charter.

In summary, Navy Federal serves a large, but restricted, range of members -- not the general public; -- and we focus our management efforts on what we know we do best -- fulfilling the needs of Department of the Navy personnel with responsive financial services.

In view of our orientation, we maintain a close working relationship with our Department of the Navy Sponsor. Our purpose is to ensure that we stay abreast of the problems and financial service needs of Navy and Marine Corps personnel and their families around the world.

As a lender to Navy and Marine Corps personnel and their families, Navy Federal has a major interest in matters involving their financial well-being. As of the end of August, we had $3.1 billion in outstanding loans to members. This included $1.88 billion in closed end consumer loans, such as new and used car loans, home improvement loans, signature loans and loans for many other purposes. We are servicing first mortgage loans totaling $1.9 billion, including $608.7 million owned by Navy Federal. (Even though we sell many first mortgage loans in the secondary market, we always service a loan we make.) We had $279 million outstanding in credit card charges, $119 million in home equity lines of credit and $78 million in other lines of credit. In addition, we had over $138 million outstanding in second mortgages and $54 million in guaranteed educational loans. In total, we have well over 630,000 loans outstanding.

Navy Federal has thus far reduced to 6% the interest rate on approximately three quarters of a million dollars of credit to 26 members who have been called to active duty. We have alerted all our service locations, worldwide, to the essential provisions of the Act so that member questions can be answered. We are requiring only a statement in writing, in no particular format, from our members advising us that they are being called to active duty and requesting relief under the Act for whichever of the many types of credit they may have with Navy Federal. A copy of the call-up orders is sufficient confirmation.

We have unilaterally decided that if one of two co-borrowers residing in the same household is called up, we will extend the 6% rate to indebtedness of the other co-borrower if it was incurred pre-call up.

We are confirming in writing to the member that we have received his/her request for relief under the Act, advising him/her the balance(s) to which the reduction to 6% applies. If the member has any form of open-end credit (credit card, home equity and other open end lines of credit), we specify that further approval of open-end credit extensions will be suspended 10 days after the date of our confirming letter, under the presumption that the member's request for relief under the Act is because his/her financial status has been "materially affected." We are also sending them the necessary forms to fill out and return to provide updated information that will enable NFCU to make a prudent decision as to future extensions of credit with minimal delay, should the member desire such extension under prevailing interest rates (rather than the 6% for line of credit extensions prior to active duty recall). We are not happy with having to interrupt our members' open-end credit in this way, but feel it must be done in fairness to the vast majority of our membership - more than half of whom are full-time active duty Navy and Marine Corps military personnel (or dependents thereof) - whose savings make their fellow members' borrowing possible.

We are advising members that the Act provides for them to apply to a court for authorization to suspend payments on indebtedness incurred prior to their call up. But we suggest that they advise us of the details of their situation so that we can work with them and save them the time, trouble and expense of going to court. At the same time, we point out that none of the indebtedness -- or interest -- is forgiven, merely postponed, and we strongly urge them to continue payment at the maximum level they can in order to avoid the increased financial burden upon their release from active duty.

Our problems with application of the Act resulted principally from changes in borrowing patterns since the passage of the Act. For example, credit cards and lines of credit were relatively minor considerations at the time the Act was passed. Today, however, a typical consumer may have a closed-end loan (such as a new car loan), several credit cards and perhaps a home equity line of credit, as well as a first mortgage. We have found it relatively easy to handle the closed-end loans; we can simply reduce the interest rate for the period the member is on active duty. Credit cards and other lines of credit are another story, however. A member may have a Visa card with a $3,000 limit, only $1,000 of which has been used at the time of his recall. While he is entitled to invoke the Act to reduce his interest rate to 6% on the outstanding balance, how does the lender handle subsequent charges after the borrower's recall, both from a philosophical and practical standpoint?. If the member cannot afford to pay the current rate of interest (14% in our case), he may well not be able to afford future charges for lines used after recall at the higher rate. He may, however, need the use of his card, giving due consideration to his new and unanticipated financial situation. The situation becomes even more difficult in the case of a home equity line of credit, where the future financial liability of both the member and the financial institution becomes greater because of the typically much larger credit limit - often $50,000 to $100,000.

There clearly is a general lack of information and knowledge among service members, financial institutions and legal advisors on how the Act should be invoked. There can be nothing automatic, since the financial institution needs to know what individuals and which of their obligations are affected. This is particularly true when the service member needs to cease making payments for the duration of his call up. Non-receipt of a payment by a creditor will, in 1990, normally result in an automatic derogatory report to the appropriate credit bureaus, but the Act does not address this. Although credit bureau records can be corrected at a later date, it would be far better if the adverse condition were not created in the first place. (Navy Federal is taking off-line action to prevent this from happening.)

Another early problem in applying the Act came with respect to mortgage loans which have been sold to investors. When the Act was created most mortgage loans were owned and held by the institutions which granted them, so there was no question about who granted forbearance or interest relief. In the intervening years, it has become commonplace for mortgage originators to sell their loans to other entities, such as the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC) and many other investors. Who absorbs the lost interest?

FNMA and FHLMC have agreed to make up the difference between 6% and the contracted interest rate on any mortgage loans sold to them on which eligible members elect to seek the protection of the Soldiers' and Sailors' Relief Act. However, GNMA has indicated that the lender must make up the difference on loans sold under the GNMA mortgage backed security program. While private investors are dealing with the difference in interest rates and the payment forbearance issue on a case-by-case basis, it is not clear where the responsibility for absorbing the interest loss lies.

Should Congress contemplate revisions to the Act, I recommend that it consider a number of areas for change or clarification. I will address those which come immediately to mind.

a. A standard form of notification by debtors to creditors should be provided so that the task is made easier for both service members and creditors, but primarily so that those called to active duty can fill out one form that can be sent to a number of creditors. A form distributed by the Department of Defense would be ideal.

b. The application of the Act to credit cards and other open-end lines of credit should be clarified. My recommendation is that only obligations incurred at the time the call-up notice is received be afforded protection under the Act. The main point is that clarification is needed so that both service personnel and their creditors know what the rules are.

c. I believe the interest rate maximum included in the Act (6%) needs to be addressed. While protecting the financial position of those called to active duty, this figure needs to be revised to a more realistic maximum. While the service members need to be protected against gouging, so must creditors be protected against being forced to "lend" money at a rate below the cost of funds...as 6% is for almost every creditor today. In these days of concerns about the viability of financial institutions, it would be prudent to set a more realistic maximum. I am not prepared at this point to recommend a specific number, but perhaps it should be indexed to a commonly used measure. In the current situation, I don't believe any urgent action is needed, since the number of "below market" rate loans that any one creditor will absorb should not be significant. Whatever is done with the interest rate, it should be stated as "Annual Percentage Rate," today's term for standardizing rates.

d. A requirement for the service members to promptly notify creditors of their release from active duty needs to be included.

e. It should be made crystal clear that lenders may not recapture the lower interest rate differential once the service member leaves active duty.

f. In these early days of trying to fairly apply the Act, it has not been clear how debtors can invoke payment forbearance, i.e., the right to suspend payments until they are able to resume them. They should not be required to go to court unless they cannot reach agreement with their creditors.

g. With respect to comakers, it is not clear how the law is to be applied. Can a comaker on a called-up service member's loan invoke the Act whether or not affected? Must they be in the same household as the called-up member?

As a military credit union, Navy Federal has interpreted the Act in favor of the service member wherever possible. We have cut through every bit of red tape, liberally applying the Act in terms of payment forbearance, comaker relief, interest rate reduction and initial application of the Act. We consider the matter under control, but the Act certainly needs modernizing in due course. On behalf of the National Association of Federal Credit Unions and the Navy Federal Credit Union, I assure you of our willingness to be of assistance to you in every way possible.

Mr. Chairman, I have appreciated the opportunity to express my thoughts today and will be happy to answer any questions.

STATEMENT OFFERED FOR THE RECORD

REAR ADMIRAL JOHN N. FAIGLE, U.S. COAST GUARD,
CHIEF OF THE OFFICE OF READINESS AND RESERVE

I AM PLEASED TO OFFER THE COAST GUARD'S VIEWS REGARDING THE SUFFICIENCY OF EXISTING STATUTES AND THE PROTECTION THEY PROVIDE TO OUR RESERVISTS WHO HAVE RECENTLY BEEN CALLED UP FOR ACTIVE DUTY IN OPERATION DESERT SHIELD.

BOTH THE SOLDIERS AND SAILORS CIVIL RELIEF ACT (SSCRA) AND THE VETERANS REEMPLOYMENT RIGHTS LAW (VRRL) CONTINUE TO PLAY A CRITICAL ROLE IN PROTECTING OUR RESERVISTS AS THEY RESPOND TO THE CALL TO SERVE THIS GREAT COUNTRY. I BELIEVE THE ORIGINAL INTENT OF THIS LEGISLATION WAS TO PROTECT INDIVIDUAL RESERVISTS FROM SUFFERING PERSONAL FINANCIAL HARDSHIP OR JOB DISCRIMINATION AS A RESULT OF HAVING BEEN RECALLED. IN SO DOING, IT ALLAYS SOME OF THE CONCERNS THAT THOSE RECALLED WILL HAVE FOR THEIR FAMILIES, HOMES AND FINANCIAL OBLIGATIONS, THEREBY ENABLING THEM TO FOCUS ON THEIR MOBILIZATION DUTIES.

AS IT EXISTS, THIS LEGISLATION SEEMS TO RETAIN THE ORIGINAL INTENT, BUT MAY BE CONSIDERED TO BE "DATED." SPECIFIC FIGURES STIPULATED IN A NUMBER OF PROVISIONS OF THE EXISTING LEGISLATION WERE DEVELOPED QUITE SOME TIME AGO WHEN THE DOLLAR WAS A CONSTANT RATHER THAN A CONSTANTLY CHANGING VALUE. AS WRITTEN, THESE LAWS MAKE NO APPARENT PROVISION FOR ADJUSTMENT. AT THIS POINT, THE COAST GUARD WOULD SUPPORT CHANGES THAT ARE MORE RESPONSIVE TO THE DYNAMICS OF THE MARKETPLACE AND STILL EQUITABLE FOR OUR RESERVISTS AS WELL AS "BEARABLE" TO THE PRIVATE SECTOR.

RECENT INFORMAL QUERIES TO COAST GUARD FIELD COMMANDERS HAVE INDICATED TWO MAJOR CONCERNS. FIRST, THERE EXISTS A STRONG POTENTIAL FOR DISCREPANCY BETWEEN CIVILIAN PAY (PRIOR TO HAVING BEEN RECALLED) AND MILITARY PAY (UPON RECALL TO ACTIVE DUTY). AS A RESULT, MANY RESERVISTS MAY EXPERIENCE DIFFICULTY WITH VARIOUS FINANCIAL OBLIGATIONS THEY MIGHT HAVE INCURRED PRIOR TO HAVING BEEN RECALLED.

ANOTHER MAJOR CONCERN EXPRESSED INVOLVED HEALTH INSURANCE. IT IS NOW A RELATIVELY MORE IMPORTANT COMPONENT OF MOST BENEFITS PACKAGES THAN IT WAS WHEN THIS LEGISLATION FIRST BECAME LAW. HEALTH INSURANCE COVERAGE IS GENERALLY CONSIDERED TO BE INCLUDED AS A "BENEFIT" UNDER VRRL.

IN REACHING THE DECISION TO BECOME...AND REMAIN...RESERVISTS, MOST PEOPLE PROBABLY DO AT LEAST AN INFORMAL CALCULATION OF THE LIKELIHOOD OF HAVING THEIR LIVES AND CAREERS DISRUPTED BY A MOBILIZATION. UNTIL RECENTLY, THAT LIKELIHOOD HAS BEEN EXTREMELY LOW. YET, WHEN CALLED, THEY CAME...JUST AS GENERATIONS OF AMERICANS BEFORE THEM HAVE COME. GIVEN THE OVERWHELMINGLY POSITIVE AND PATRIOTIC RESPONSE TO THE RECENT RECALL, WE HAVE A TREMENDOUS RESPONSIBILITY TO OUR PEOPLE TO ENSURE WE PROVIDE THEM CONSIDERATION WORTHY OF THE DEDICATED SERVICE THEY PROVIDE TO THE NATION.

TO THAT END, THE COAST GUARD HAS BEEN WORKING VERY CLOSELY WITH THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE FOR RESERVE AFFAIRS TO COORDINATE THESE CONCERNS AND TO PROVIDE A JOINT

RESPONSE TO THE COMMITTEE'S INQUIRIES. THIS ENSURES THAT ANY ADVERSE IMPACT OF THE CURRENT LAW ON OUR COAST GUARD RESERVISTS WILL BE ADDRESSED BY COMPREHENSIVE LEGISLATIVE PROPOSALS JOINTLY SUPPORTED BY ALL OF THE COMPONENTS.

WE ARE MOST GRATEFUL TO THE DEPARTMENT OF DEFENSE FOR ITS CONTINUED COOPERATION. DOD ASSISTANCE HAS BEEN A MAJOR FACTOR IN FURTHERING OUR ABILITY TO QUICKLY ANSWER OUR RESERVISTS' MANY COMPLEX QUESTIONS. DOD'S RESPONSIVENESS IS AN OUTGROWTH OF THE STRONG WORKING RELATIONSHIP PREVIOUSLY FORGED IN PREPARATION FOR JUST SUCH A CONTINGENCY.

YOU, THE MEMBERS OF CONGRESS, ARE ALSO TO BE APPLAUDED FOR YOUR FORESIGHT AND CONCERN FOR THE RESERVIST'S WELFARE. THANKS TO YOU, THE LEGISLATIVE BACKBONE FOR BOTH THE QUICK RECALL AND THE FULL SUPPORT OF THOSE RECALLED HAS BEEN THERE WHEN IT WAS NEEDED MOST. ENSURING OUR PEOPLE HAVE THE MAXIMUM LEGISLATIVE PROTECTION FOR THE HOMES AND JOBS THEY HAVE LEFT TO ANSWER THEIR COUNTRY'S CALL IS NO LESS IMPORTANT THAN INSURING WE PROVIDE THEM WITH PROPER WEAPONS AND PROTECTIVE GEAR TO PERFORM THEIR MILITARY TASKS. AGAIN, WE ARE MOST APPRECIATIVE OF YOUR CONTINUING SUPPORT AND CONCERN.

RECORD VERSION

STATEMENT BY

MG WILLIAM F. WARD

CHIEF, ARMY RESERVE

OFFICE, CHIEF, ARMY RESERVE

DEPARTMENT OF THE ARMY

BEFORE THE

JOINT HEARING OF THE

SENATE AND HOUSE COMMITTEES ON VETERANS' AFFAIRS

SECOND SESSION, 101ST CONGRESS

SEPTEMBER 12, 1990

ON

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

AND

VETERANS' REEMPLOYMENT RIGHTS

NOT FOR PUBLICATION
UNTIL RELEASED BY
THE HOUSE AND SENATE
VETERANS' AFFAIRS
COMMITTEES

STATEMENT OF MAJOR GENERAL WILLIAM F. WARD
CHIEF, ARMY RESERVE

Messrs. Chairmen and members of the Committees:

It is a pleasure to discuss the adequacy of protections afforded by the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA) as amended (50 U.S.C. App. 510 *et seq.*) (38 U.S.C. 2024) for members of the United States Army Reserve, especially those who have been mobilized for Operation Desert Shield. While these laws adequately cope with many frequently repeated issues and problems for our soldiers, several serious concerns remain that should be carefully studied in connection with possible future relevant legislation:

a. **Stays of proceedings**. Section 210 (50 U.S.C. App, section 521 -- Stay of proceedings where military service affects conduct thereof) could be amended by adding language that would ensure that courts do not consider letters and affidavits requesting stays pursuant to the Act to constitute personal appearances for jurisdictional purposes. Some courts, which otherwise did not have *in personam* jurisdiction, concluded that such a request under the SSCRA provided the requisite appearance for jurisdictional purposes. *Cf., Skates v. Stockton,* 140 Ariz. 505, 683 P.2d 304 (Ct. App. 1984).

b. **Default judgments**. Section 200(4) (50 U.S.C. App section 520 (4) -- default judgments; affidavits; bonds; attorneys for persons in service) new language would enable soldiers to reopen default judgments when their only communications to the court have been requests for stays pursuant to the SSCRA. Otherwise, some courts will not only exercise personal jurisdiction based on a servicemember's letter requesting a stay, but will also decline to reopen the judgment entered. These courts consider the letter to have been an appearance, thereby precluding further proceedings to reopen under section 200 (4).

c. **Eviction from leased housing**. Section 300 (1) (50 U.S.C. section 501(1) -- Eviction or distress during military service; stay; penalty for noncompliance; allotment of pay for payment) by changing the statutory value to more closely reflect current rental values and enable soldiers to defend against eviction proceedings as envisioned by the drafters of the SSCRA. Linking the satututory value to the appropriate rental index would allow for annual adjustments in housing costs.

The issues reflected in these recommendations have far-reaching implications for members of the reserve components who, often minimal notice, find themselves "stopping their normal lives" to serve their country as soldiers, often at greatly reduced pay, as they are currently doing in Desert Shield, and did in Just Cause. It is not uncommon for a reservist called to active duty to be (previously) involved in litigation that would require a stay of proceedings in order to ensure justice for the deploying soldier. Making these changes would greatly facilitate reserve component soldiers' ability to mobilize quickly.

An additional problem exits for the many activated reserve component health care professionals who do not have insurance to cover malpractice claims not yet filed at the time the policy ends. Activated soldiers with these claims-made insurance policies must buy ongoing claims-made insurance to cover their future liability. This insurance is based on specialty and can be very expensive. Current laws do not protect individuals from such previously incurred liability while activated.

The need for health care professionals in the Total Force cannot be overstated. This malpractice issue, coupled with the present restriction imposed by 10 U.S.C. 671 which requires 12 weeks of basic training for doctors prior to overseas assignment, is a serious recruiting and retention detractor, and adversely affects our force readiness.

In conclusion, I wish to express my deep appreciation for the privilege of sharing my perspective on the timely issues of ensuring sufficient legislative protection for soldiers. World events continue to impress upon us the need for a strong reserve force. With today's Total Force policy, it is imperative that the laws that protect today's soldiers keep pace with the rapidly changing world and ensure equity and fair treatment for all soldiers.

STATEMENT OF

CHARLES O. ZUVER
SENIOR VICE PRESIDENT AND DIRECTOR OF GOVERNMENTAL AFFAIRS
CREDIT UNION NATIONAL ASSOCIATION

and

JAMES W. ROWE
PRESIDENT/CEO, DEFENSE CREDIT UNION COUNCIL

SUBMITTED TO THE HOUSE AND SENATE
COMMITTEES ON VETERANS' AFFAIRS

SEPTEMBER 19, 1990

On behalf of the Credit Union National Association and Affiliates, and the Defense Credit Union Council,* we appreciate the opportunity to submit a statement for the record on the Soldiers' and Sailors' Civil Relief Act. The Act was the subject of hearings before the House and Senate Veterans' Affairs Committees on September 12, 1990.

Summary of Our Views

Credit unions are proud to be able to assist active duty military personnel and their dependents by complying with the Act. Our organizations are fully supportive of the intent and purpose of the Act. However, compliance with the law today does raise some issues which could not have been foreseen when it was enacted fifty years ago, or even when it was last amended in 1972. We believe that a review of the Act would be beneficial for military personnel as well as their creditors. However, such a review, we think, should not be made while the crisis in the Persian Gulf continues but rather, at a later time during the next Congress when individuals are not on active duty as a result of overseas conflicts. Our compliance concerns are detailed below.

Credit Unions Support the Act

We are pleased to report to the Committees that credit unions are making every effort to comply with the Act. Credit unions are financial cooperatives which are organized, owned, and operated by their members. Only individuals within a natural person credit union's field of membership may belong to that institution.

Credit unions exist to serve their members' financial needs. Members often feel that when they need financial assistance the most, it is their credit union that provides it.

Credit unions view their responsibilities under the Act as an opportunity to help members and the dependents of members who are financially disadvantaged as a result of being active duty military personnel. Even if Congress had not enacted the Soldiers' and Sailors' Civil Relief Act, credit unions would be working with their active duty military members to try to reduce their financial burdens during the period of active service.

CUNA and the Defense Credit Union Council have also tried to do their part to make sure credit unions are aware of their obligations under the Act. As soon as the President began calling up military personnel to active duty, each of our organizations included articles in our newsletters to remind credit unions about the Act's provisions. A copy of a Special Report on operational questions under the Act prepared by CUNA and sent to all credit unions is attached to this statement.

It is our understanding that the law was passed in 1940 to further the interests of the national defense by temporarily limiting financial obligations for individuals whose ability to repay has been lessened as a result of going on active duty.

We believe that the Act does not mean that active duty service personnel do not have to repay their debts. It does recognize, however, that some individuals who took on loans before their active duty status may not be able to afford to make loan payments on their active duty pay.

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* The Credit Union National Association (CUNA) is the national trade association for the country's over 14,000 state and federally chartered credit unions, which are represented through our 52 league affiliates. The Defense Credit Union Council is comprised of about 350 credit unions whose membership consists wholly or in part of Department of Defense personnel, both military and civilians.

Purpose of the Act

Thus, if the financial status of an active duty service member is "materially affected" through, for example, a pay cut, he or she is entitled to make reduced interest payments on pre-existing loans. Further, the ability of creditors to utilize legal proceedings to collect payments on prior debts is limited during the active duty period.

We think that the Act makes good sense and serves the interests of the national defense. We do not think that any major changes in the objectives of the Act are desirable.

Concerns with Compliance

While credit unions fully accept their responsibilities under the Act, how to achieve compliance in many instances is unclear. In essence, credit unions are concerned about the application of a law of the 1940's to the financial marketplace of the 1990's.

1. Interest Limits

One of the areas of concern relates to the 6% interest rate limitation that applies to debts incurred prior to active duty for military personnel who are entitled to relief under the Act. We believe the interest rate limit was not intended to provide a service member a financial bonus for military service at the expense of the creditor, but rather was designed to prevent military service from imposing a financial hardship.

The effects of the anachronistic 6% rate cap on lenders is further complicated by the issue of whether the difference between the contract rate and the maximum rate allowed under the Act is ever recoverable by the lender. This issue of foregone interest becomes even more critical when home mortgages and home equity lines of credit are involved.

We understand that the Congressional Research Service has reached the conclusion that the interest may not be recaptured. If this is a correct interpretation, and we are not totally certain that it is, a review of the 6% rate cap becomes even more important to ensure creditors are not unintentionally burdened as a result of the unforeseen gap between the rate limit under the law and the rate limit set by the financial marketplace. Because market rates on loans such as mortgages, cars, credit cards and home equity lines of credit are today typically much higher, we think that a review of the 6% interest rate cap would be useful.

Other issues relating to the 6% interest rate concern implementation. Under other statutes which impose affirmative duties on financial institutions, Congress has delegated compliance issues to a regulatory agency responsible for implementing the law. With the Soldiers' and Sailors' Civil Relief Act, however, there is no implementing agency for financial institutions. In light of this fact and in order to provide some guidance to financial institutions, Congress may want to assign to the bank regulatory agencies the responsibility to address questions such as:

(a) is the difference between the contract rate and the 6% rate cap recoverable by the lender;

(b) how does the rate cap apply to fees relating to new advances under open end credit plans (it is unclear whether fees that are not related to specific transactions and that might come due during active duty, such as renewal fees, are to be included in the 6% limit); and

(c) how is the 6% interest rate to be computed.

2. Credit Unions With Disproportionately High Numbers of Active Duty Members

We are concerned about the affect of the Act on some credit unions that have a high percentage of members on active duty at any one time. For example credit unions whose field of membership is almost exclusively individuals who qualify for protection under the Act could be severely disadvantaged if they have contracted for higher rates of interest on large obligations (such as mortgages, home equity lines of credit, or car loans), and are limited to collecting 6% on most of their loans. Such credit unions could be particularly jeopardized if Congress allows the President to place individuals on active duty beyond the 180 days allowed under the War Powers Act without congressional intervention.

The raising of this issue does not in any way suggest an unwillingness on the part of any credit union to comply with the intent and purpose of the Act, but rather indicates that compliance with the Act over extended periods may raise safety and soundness concerns for some credit unions whose fields of membership contain a disproportionately high number of active duty service personnel. We strongly encourage Congress to consider whether some changes in the Act might be desirable to prevent financial hardships on institutions with high concentrations of active duty personnel.

Conclusion

CUNA and the Defense Credit Union Council thank the Committees for conducting this review of the Act and for your attention to our concerns. Credit unions are anxious to comply with the Act, but there is some uncertainty in applying the law to modern financial institution loan products. While we do not suggest changes during the present conflict in the Middle East, we strongly recommend that the Committees review the Act at a later time with an eye toward facilitating compliance for financial institutions as well as for service personnel.

We would be happy to discuss our concerns further with Committee members or staff. Please feel free to call either of us at 682-4200 if further information is requested. Thank you.

CREDIT UNION
NEWSWATCH
THE WEEKLY
NEWS PUBLICATION
OF THE CREDIT
UNION SYSTEM

Deposit Insurance Hearings Commence In House This Week

"We must now confront what no one wanted to admit four or five years ago: the deposit insurance system is in urgent need of repair," House Banking Committee Chairman Henry Gonzalez (D-Tex) told the House of Representatives last week.

Gonzalez's statement was made on the House floor, where he also announced dates and witnesses for hearings.

The hearings, he told *The American Banker*, would consider changes in and consolidation of the regulatory functions of CUs, banks and S&Ls, and consolidation of the deposit insurance activities of the NCUSIF with the FDIC's Bank Insurance Fund and Saving Associations Insurance Fund (*Newswatch*, Sept. 3).

Select government witnesses are scheduled to testify during the first three weeks of hearings: Federal Reserve Board Chairman Alan Greenspan on Sept. 13; Robert Reischauer, director of the Congressional Budget Office, on Sept. 17; Charles A. Bowsher, comptroller general for the General Accounting Office, on Sept. 19; and FDIC Chairman L. William Seidman on Sept. 25.

Witnesses from the private sector are expected to be invited to testify during October.

Gonzalez characterized his goal as one that would "strengthen and protect" the deposit insurance system, and the financial institutions whose deposits are insured. Gonzalez said the goal can be achieved by:

- Providing and enforcing adequate capital standards;
- Limiting deposit insurance coverage and requiring realistic pricing for that coverage;
- Unifying the regulatory system and making it independent;
- Requiring regulators to act promptly and decisively when an insured institution begins to weaken;
- And making holding companies responsible for losses their insured institutions incur.

Single, Independent Regulator

Gonzalez said FIRREA went a long way to correct flaws in the system, "but we need to do more." He spoke favorably of consolidating regulatory functions in a "single, truly independent agency." Such an agency, he said, "would provide consistent administration of laws intended to protect safety and soundness of insured institutions."

CUs were not singled out for comment or criticism during Gonzalez's remarks. But the close relationship between S&Ls and the now extinct Federal Home Loan Bank Board, and the diffusion of banking regulation among the Treasury Department, the Federal Reserve and the FDIC were cited as factors that support the need for a single, independent regulatory agency.

The hearings, Gonzalez recently told an *American Banker* reporter, will lead to his introduction early next year of two legislative proposals: one to consolidate deposit insurance activities of the NCUSIF and FDIC, and another to consolidate the regulation and supervision of CUs, banks and S&Ls under a single regulator.

Senate Action Anticipated

The Senate Banking Committee this fall could follow an approach similar to that being taken by the House. Last week Chairman Donald Riegle (D-Mich) told reporters he expects to introduce his own deposit insurance reform proposal as early as this week. Details of the proposal were not made public, but Riegle praised Gonzalez's "thoughtful proposal" and said he looks forward to working with the House on resolving the regulatory and deposit insurance problems.

In this issue . . .

Page 2-4: Soldiers' and Sailors' Relief Act. Compliance details CUs need to know.

Page 7: District Meetings. Dist. 5 opens schedule.

Page 7: Notes Bearing Interest. Payday, graduation day and an odd coincidence.

Page 8: People & Places. Connecticut CU leader dies.

September 10, 1990

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SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Compliance Details Credit Unions Need to Know About

Credit unions are making every effort to assist members and the dependents of members who have been called to active duty as a result of the developments in the Persian Gulf.

A major component of such assistance includes compliance with The Soldiers' and Sailors' Civil Relief Act. As reported in *Newswatch*, Aug. 20 and Sept. 3, the Act is a federal statute that allows military personnel to pay lower interest on certain loans and limits a creditor's remedies in compelling loan repayment while the individual is on active duty.

Compliance with the Act today may not be as straightforward as when the Act was adopted in 1940 or even when it was last amended in 1972. The Act itself is unclear on a number of practical questions to which CUs need answers in order to comply.

In addition, **compliance with the Act will trigger some Truth-In-Lending requirements.**

This article addresses compliance issues raised by the Act. It provides reasonable interpretations based on numerous conversations with attorneys at the Department of Defense and the Federal Reserve Board. It reviews earlier information provided in *Newswatch*, and provides additional details of how the Act affects CUs.

This article, however, is **not** an official interpretation of the Act. No department within the federal government has been charged with overseeing financial institution compliance with the Act.

Thus, no governmental agency has provided official interpretations on which CUs may rely in complying with the Act. CUs that have questions about applying the Act to their unique situations not covered by this report should contact their data processor and legal counsel for further assistance.

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PURPOSE OF THE ACT

Q. What is the purpose of The Soldiers' and Sailors' Relief Act?

A. The law was enacted to further the interests of the national defense by temporarily limiting financial obligations for individuals whose ability to repay has been lessened as a result of going on active duty.

Q. In general terms, what does the Act do?

A. The Act does not relieve the obligation of active duty service members to repay debts.

It does recognize that some individuals who incurred debts prior to active duty may not be able to afford loan payments on active duty pay.

If the ability of an active duty service member to repay previous loans is "materially affected," that is, the member suffers a pay cut as a result of being called up, he gets a break on some interest payments during the active duty period.

Also, during such an individual's active duty, institutions are limited in their ability to institute legal proceedings to collect payments for debt incurred prior to active duty.

Q. Who is protected by the Act?

A. All persons on active duty, including the National Guard, Reserves, Army, Navy, Air Force, Marine Corps, or Coast Guard. Persons training under the supervision of the United States as preliminary to induction into military service, officers of the Public Health Service detailed for duty with the military services, and all persons who have been ordered to report for induction are included.

Q. Are dependents of active duty personnel protected under the Act?

A. The Act does not define the term "dependents." It does provide that individuals who are unable to meet obligations because they rely on an active duty military service member for financial support may receive some protection under the Act. They are not entitled to receive reduced rates of interest on loans (unless there is joint account with the service member), but may seek court protection to prevent foreclosure, repossession or an out-of-court sale.

Q. When does protection apply?

A. The protection of the Act applies during active duty, which begins on the date service begins and ends when an individual is "separated," ➧

that is, dies while on active duty or is released from active duty. Enlisted reservists may receive protection as soon as they receive orders to report.

INTEREST RATE LIMITATIONS

Q. What are the interest rate restrictions?

A. Under the Act, as soon as an individual goes on active duty or receives orders to report if he is an enlisted reservist, he may begin paying 6% interest on obligations incurred prior to active duty.

Thus, a CU may not charge more than 6% interest on loans or lines of credit established prior to time the service member goes on active duty.

The 6% limitation applies to outstanding balances on loans taken out prior to active duty, including credit card lending, home equity lines of credit, home mortgages, car loans, share secured loans and signature loans. It **does not apply** to new advances under an existing credit card or home equity line of credit program.

The 6% limitation would also apply to prior joint obligations. (Co-debtors may also be able under the discretion of the court to obtain stays, postponements or suspensions of legal proceedings.)

Q. Does the 6% interest limit include fees?

A. For closed-end loans, it is clear that the rate limitation applies to all fees, service charges, renewal charges or any other charges except for bona fide insurance.

Thus, if a CU charges the full 6%, it may not charge other fees, including an annual fee, during the service member's period of active duty.

How the 6% rate limit affects fees for open end obligations is not as cut and dried. In trying to sort out how fees will be affected, it may be useful to determine whether fees are related to specific transactions.

It appears that if a fee is related to new advances taken while the service member is on active duty, the fee may be added to the account balance. Fees that relate to the outstanding balance prior to active duty and that have not been paid when active duty begins may not be added to the account. If such fees have already been billed, they should be removed from the account.

It is unclear whether some fees that are not related to specific transactions and that might come due during active duty, such as a renewal fee, are to be included within the 6% rate limit. The more conservative approach would be to include such fees within the 6% limit because they apply to the account as a whole. However, there may be data processing problems because the renewal fee may be shown on the account statement as part of new advances, to which the 6% rate limit does not apply.

Another reasonable view is that because the renewal fee will be imposed during active duty, it may be added to the account as obligations incurred while the service member is on active duty.

Thus, there is no definitive answer on whether fees such as renewal fees that come due during active duty are subject to the 6% rate limit. CUs should discuss this and similar issues with their data processors and attorneys.

Q. What must a service member who is covered by the Act do to receive reduced rates?

A. The Act does not **require** an active duty service member to do anything in order to receive the 6% interest.

CUs may ask a service member to provide some evidence of active duty status, such as a copy of the orders. The orders will show when the active duty status begins and indicate how long it will last.

Knowing when active duty status begins and ends is important for applying the rate reduction and for Truth-In-Lending requirements (addressed below).

However, **the CU may not refuse to reduce the rate** if the member does not provide evidence of active duty status. (See question below.)

Q. If a CU thinks a member is not entitled to the rate reduction, may it refuse to lower the rate?

A. Not automatically. Only by going into court and proving that the ability of the service member to repay borrowing has not been materially affected by active duty may a creditor be released from the rate reduction.

Also, during the court proceedings a creditor may be able to show that a service member may be able to pay more than 6%, even if he is unable to pay the full contract rate while on active duty.

Q. May a service member suspend payments?

A. A service member may not suspend payments without court approval. If a service member is having difficulty making loan repayments (even with the 6% rate), he may petition the court to suspend or reduce payments. Also, if the service member is being sued for repayment of an obligation, the court may authorize suspended or reduced payments.

Q. Rather than collect the 6% provided by the Act, may the creditor and the service member renegotiate the original loan contract?

A. The Act provides that contracts may be modified, terminated or cancelled and that property which is security for an obligation may be repossessed, foreclosed, sold or forfeited pursuant to a written agreement between the creditor and the service member that is entered into during or ▶

after the period of active duty.

Q. Does the 6% interest rate limitation apply to new advances under an open end credit plan?

A. The Act allows service members who suffer reduced financial circumstances as a result of being on active duty to pay lower interest on loans based on different financial circumstances. However, the 6% does not apply to new advances under either a home equity line of credit or credit card plan taken out after the service member is on active duty. He is aware of his reduced situation and will be responsible for repaying at the original contract rate any new advances taken out while on active duty.

Q. Instead of reducing the dollar amount of payments based on the reduced interest rate, may creditors reduce the total number of payments due?

A. Creditors may not be in compliance with the intent of the Act if, rather than reduce the amount of any payment on outstanding balances due while the member is on active duty, they reduce the number of total payments the member must make.

The purpose of the Act is to provide temporary relief while the service member is on active duty. Thus, generally, a creditor may not be following the Act by reducing the number of payments.

Q. How is the 6% interest to be computed?

A. There is no guidance from the Act. Based on federal case law, it would be reasonable to assume that creditors should use a simple interest rate.

Q. May an institution recapture lost interest?

A. Again, the Act does not address whether the creditor has a right to recapture the difference in interest between the contract rate and the 6% rate cap. Department of Defense officials informed CUNA that their position is that the interest is not recoverable.

TRUTH-IN-LENDING ISSUES

Q. What, if any, requirements under Truth-in-Lending (Reg. Z) result from compliance with the interest rate limits?

A. Change-in-terms requirements under Sec. 226.9(c) of the rule will apply to open end obligations, including credit card borrowing and home equity lines of credit.

When the rate on the outstanding balance (prior to active duty) goes down to 6%, a change in terms notice is not required. Rate reductions are explicitly exempted from such notice requirements.

However, change-in-terms requirements must be met when the member is no longer on active duty and the rate on the outstanding balance incurred prior to active duty returns to the contract rate.

This means that not less than 15 days prior to the rate increase, the CU must provide a written notice to affected service members. The notice must be given to each member affected.

A staff attorney for the Federal Reserve Board has indicated that when a CU learns of or receives notice of an individual's active duty, it may provide the change in terms notice at that time. The notice should state that the rate will be increased to the original rate upon discharge of the service member from active duty.

Q. Are change-in-terms notices required as a result of the rate being changed from 6% to the contract rate for new advances?

A. The 6% interest limit does not apply to new advances. Thus, the rate for new advances never changes. This means that **change-in-terms notices do not have to be provided prior to charging the contract rate for new advances** made while the service member is on active duty.

Q. Does changing the rate on outstanding balances for home equity lines of credit conflict with Reg Z?

A. Under Reg Z, the APR on a home equity line of credit may be changed only if it fits one of the categories of permissible changes.

Reducing the rate to 6% on outstanding balances would be considered to be a beneficial change under Sec. 226.5b(f)(3)(iv). Increasing the APR back to the original contract rate will also be permissible under this same section. The Federal Reserve Board's Commentary to this section of Reg Z indicates that lenders may temporarily reduce rates and then return the rate to the original level.

Q. When may the original rate be restored?

A. The contract rate on the outstanding balance prior to active duty may be reinstated as soon as the service member is no longer on active duty. By reviewing the member's military orders, the CU will have a pretty accurate picture of when the member will be discharged. It should change the contract rate at that time, even if it does not receive actual notice of the discharge until a later date. The CU may have to adjust the account balance at a later time, depending on the actual date of discharge.

In addition, the Act provides that a creditor may not obtain a default judgment against a service member unless it follows specific procedures. Details will be given in next week's Newswatch.

THE BEST IN THE WEST

CUNA's 1990 National Convention & Exposition
October 28-31, • Bally's Reno • Reno, Nevada
Sponsored by Your League and CUNA & Affiliates

Credit union range riders—get ready to break camp and saddle up for the biggest and best CUNA National Convention & Exposition ever!

Chock-full of important news, views and networking, the Reno Roundup is packed to the hilt with all the exciting information you need to forge new frontiers in the '90s.

Noted National Speakers

John Naisbitt is one of the most respected speakers on trends in society and business. He is the author of runaway sellers, Megatrends, Reinventing The Corporation and Megatrends 2000. Naisbitt sees change everywhere and will present a positive path into the upcoming new—and different—century.

Joe Cappo is author of FutureScope, a current best-seller that focuses on important marketing trends and offers recommendations for the future. He is an award-winning weekly columnist for Crain's Chicago Business, vice president and group publisher of parent Crain Communications and publisher of Advertising Age.

Tom Sullivan is a leading corporate achievement speaker. An accomplished singer, composer, actor and athlete, he is also a reporter for Good Morning America. The motion picture, "If You Could See What I Hear" was based on his life and how he overcame personal obstacles.

An Open Range of Opportunity

The convention includes:

- Choice of more educational sessions than ever before
- Credit union networking sessions
- National issue forums
- Special "Partners' Program"
- Operation Grassroots update
- Visit with vendors
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RENO ROUNDUP

Plan Your Ride to Reno!

Be a part of the Reno Roundup October 28-31, in Reno, Nevada. You'll never have a better opportunity to learn more about credit union operations and how to compete successfully in the '90s. We'll be looking for you at the Roundup!

RENO ROUNDUP

CUNA's 1990 NATIONAL CONVENTION & EXPOSITION

REGISTRATION FORM

☐ YES! Register me for CUNA's 1990 National Convention & Exposition, October 28-31 in Reno, Nevada.

Name ______________________ (as you wish it to appear on your badge)

Title ______________________ (as you wish it to appear on your badge)

Spouse/Guest ______________________ (as you wish it to appear on the badge)

Credit Union Name ______________________

Mailing Address ______________________

City __________ State ________ Zip ______ Phone (   ) __________

Bunking at Bally's

Bally's Reno, the Convention Hotel, is offering single/double rooms for only $79 per night. Registrants are responsible for their own hotel accommodations. Rooms must be reserved by **Friday, September 14.** A hotel reservation card will be mailed to each registrant upon receipt of the registration form and fee, or the hotel can be contacted by phoning **1-800-648-5080** or **1-702-789-2000.**

Payment and Fees

☐ Registration fee $450

☐ Registration fee for National Directors $395

☐ Partner Program (Spouse/Guest) $250

Total Amount Enclosed $________

Make share draft or check payable to:
Credit Union National Association, Inc.

Or, use your credit card to register:

☐ Charge $ _______ to my ☐ VISA ☐ MasterCard

Card account number: ______________________

Expiration date: ______________________

Print name as it appears on card: ______________________

Signature: ______________________

Credit card registrations can be faxed to #608-231-4858 or phone 1-800-356-9655 extension 5700.

Refund Policy

Full refunds will be issued until September 28. After September 28, refunds will be made minus a $100 penalty. No refunds after October 25. Substitutions are acceptable. All cancellations and substitutions must be made in writing.

For More Information:

Call 1-800-356-9655 and ask for extension 5700 or 1-608-231-5700.

Convention Airline:

Fly American Airlines to Reno and save 45% off full coach fare or 5% off any fare. Call 1-800-433-1790 and ask for Star File #S19Z04R to save money on flights. You or your travel agent can call; agents receive normal commissions.

Mail Registration Form To:

Credit Union National Association
Department 67-3-530
P.O. Box 431
Madison, WI 53701-0431

Positions Held Within the Credit Union System

(Check all that currently apply):

☐ CEO/President/Manager

☐ Vice President

☐ Other Management Position: ______________

☐ Technical Operations Staff

☐ Teller/Clerical

☐ Back Office Operations Support

☐ Volunteer/Board Member

☐ League Staff

☐ Other ______________

Accounting Use:

For Office Use Only:

Member # ______________________

Received __________ Entered __________

Confirmed ______________________

District Meeting Series Starts In Indianapolis

In the first of a series of meetings leading up to the CUNA Annual Meeting next month in Reno, CUNA Dist. 5 met Aug. 25 in Indianapolis, Ind.

The District deferred election of its CUNA Director from among the league chief executive officers until its Reno caucus, but elected Tom Gaines, Tennessee, as alternate. Robert Burt, Tennessee, was elected an alternate CUNA Director to fill the unexpired term of Robert Easton. Geraldine Romanauski, Michigan, was elected to CUNA's Resolutions Committee.

Ruth Kelly, Indiana, was designated to the CUNA Executive Committee, with Robert Burt as alternate, and Wayne Woodward, Kentucky, was designated to the CSG Executive Committee, with Geraldine Romanauski as alternate.

In other action, the District approved a CUNA dues rate of 13 cents per member for 1991, adopted revised district guidelines, and endorsed the candidacies of Janet Miller, Christie Eugene, David Schmidt and Gary Janacek for CUNA table offices in 1990-91. The District also voted to contribute $250 each to the CUNA Foundation and the Filene Research Institute, and $50 to the Race for Cooperative Development.

District officers for 1991 will be Wayne Woodward, chairman; Chuck Kolin, Michigan, vice chairman; Greg Isenberg, Kentucky, secretary; Marion Taylor, Michigan, treasurer; and Ken Bixby, Michigan, assistant treasurer. The District will hold its 1991 meeting Aug. 23-24 in Lexington, Ky.

This month, CUNA Dist. 6 will meet in Rosemont, Ill., and CUNA Dist. 9 will meet in Albuquerque, N.M. Other Districts will meet in Reno during the CUNA Annual Meetings.

NOTES BEARING INTEREST

■ California State ECU #9, Berkeley, recently offered assistance to state and university employees while the state budget was being ratified. Because the state was unable to meet its payroll, CSECU authorized overdrafts, advanced automatic payroll deposits, delayed loan payment dates and made short-term loans to affected Cal Trans employees. The CU also provided special 30-day loans at 8.50% APR, which were processed on the spot. During the delay, the CU helped more than 40 Cal Trans employees.

■ Virginia's Tidewater Chapter of CUs has awarded $450 scholarships to seven area high school graduates -- all CU members -- through the sixth annual Jack E. O'Connor Memorial Scholarship program. O'Connor, a long-time CU volunteer, founded St. Pius FCU, Virginia Beach, in 1966 and served as volunteer editor of the Virginia League's publication, *The Virginian*, until his death in 1979.

■ Most people don't like to receive complaints, but Alternatives FCU, Ithaca, N.Y., is concerned because it has been receiving too few from its members. So it's going after more. The CU surveyed members in the CU lobby, as well as real estate agencies and small businesses, and conducts continuing surveys of new members, mortgage applicants and members closing their accounts. The CU put another suggestion box in its lobby, and started following up on complaints to see if they were satisfactorily resolved. The number of complaints has correspondingly increased. "Complaints provide opportunities to serve members in better ways," says CU manager Bill Myers.

■ CPM FCU, Greenville, S.C., sponsored discussions about drugs and drug abuse in August for children ages 8 to 12. In four of the CU's branches, local policemen and sheriff's deputies were on hand to provide information, and a 20-minute video called "Just Say No!" was shown.

■ Los Angeles Police CU used an appropriate medium to advertise its July vehicle loan promotion: a half-page ad in *The Thin Blue Line*, magazine of the L.A. Police Protective League. The promo also included displays placed in LAPCU branches and police division facilities.

■ After several years of relatively sluggish growth, Wisconsin CUs grew 15.4% (annualized) in the first half of 1990, according to CU Commissioner Richard Ottow. Total assets as of June 30 topped $4 billion. The commissioner's report also notes that Wisconsin CUs now have 51.22% of their total investments in Wisconsin Corporate Central CU, compared to a national average of 30.6% for all corporates.

■ Orange County Teachers FCU, Santa Ana, Cal., offers "ReadyLine" pre-approved loans at 15.5% APR, with an additional 0.50% discount for payment through automatic transfer from share accounts or share draft accounts. A letter announcing the program drew a 9% response rate from members, who have taken out $1.4 million in loans under the new program.

■ Little Rock AFB FCU, Jacksonville, Ark., is buying up its members' old, unused bank checks for three cents each when they open a CU checking account. After only a month, the CU had bought more than 10,000 checks, which are now on display, torn in half, in a plastic box in the CU lobby.

■ Talk about coincidences: As of Sept. 5, CUNA & Affiliates had recorded exactly as many registrations for its 1990 Convention -- 1,228 participants and 454 spouses -- as it had in total registrations for its 1989 Convention. And, notes Convention Director Barbara Main, the 1990 event is still seven weeks away.

PEOPLE & PLACES

The Montana League board has endorsed the candidacies of Janet **Miller**, **Christie Eugene**, **David Schmidt** and **Gary Janacek** for CUNA Table Offices in 1990-91.

O. Louis Olsson, a past director of the Connecticut League and retired general manager of East Hartford Aircraft FCU, died Sept. 3 in Hartford, Conn. He was 79 years old. In 1972, President **Richard Nixon** appointed him to the National CU Board, advisory body to the NCUA Administrator and predecessor of today's NCUA Board.

Nancy Huepenbecker has been named vice president, Publications, for CUNA & Affiliates, succeeding **Alan Cleveland**, who is on a disability leave. Previously she was acting vice president.

Mark Kennedy has been named vice president, Finance & Administration Group, for the Michigan League. Previously he was director of finance and administrative services for the city of Southfield, Mich.

S&L Offenders Get Stiff Sentences

Virtually all offenders recently convicted of S&L fraud have no previous record, but they are getting harsher prison sentences than the typical white-collar criminal, the Justice Department reports.

Of the 128 conviction since Oct. 1, 1988, the average prison sentence has been 3.2 years, compared with an average of 2.5 years for all federal fraud cases, including embezzlement and forgery.

In a recent report on major S&L fraud cases – those involving a loss of more than $100,000 or in which the defendant was an executive or officer of a thrift – the Justice Department said sentences have ranged from probation to 30 years.

The 30-year term was handed out to Woody Lemons, former chairman of the failed Vernon S&L, Texas. Lemons, who was convicted on 13 counts, could have gotten 65 years.

Other important sentences: A 15-year prison term to Robert Hopkins, former chairman of Commodore Savings Assn., Dallas, and 12-year terms to Oscar Tharp, president, and John O'Donnell, vice president, of First Mutual Savings Assn., Pensacola, Fla.

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CUNA's 1990 NATIONAL CONVENTION & EXPOSITION
OCTOBER 28-31 • BALLY'S RENO • RENO, NEVADA

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RECORD VERSION

STATEMENT BY

LIEUTENANT GENERAL JOHN B. CONAWAY

CHIEF, NATIONAL GUARD BUREAU

UNITED STATES AIR FORCE

BEFORE THE

COMMITTEES ON VETERANS' AFFAIRS

UNITED STATES SENATE

AND

HOUSE OF REPRESENTATIVES

SECOND SESSION, 101ST CONGRESS

SEPTEMBER 12, 1990

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
VETERAN'S AFFAIRS
COMMITTEE

LIEUTENANT GENERAL JOHN B. CONAWAY
CHIEF, NATIONAL GUARD BUREAU

Lieutenant General John B. Conaway is Chief of the National Guard Bureau, Washington, D. C.

General Conaway was born in Henderson, KY. He received a Bachelor of Science Degree in Business Administration in 1956 from the University of Evansville, IN. In 1975, he received a Master's Degree in Management and Human Relations from Webster College, St. Louis. General Conaway completed U. S. Air Force Commanders Safety School in 1969, Air Command and Staff College in 1971, Air University Commanders School in 1972 and the Industrial College of the Armed Forces in 1973.

General Conaway was commissioned a Second Lieutenant in the U. S. Air Force in June 1956. After basic pilot training, he attended advanced combat crew training, graduating in 1958. His next assignments were as an F-102 fighter interceptor pilot in the Air Defense Command at K.I. Sawyer Air Force Base and Kincheloe Air Force Base, MI. In 1960, General Conaway joined the West Virginia Air National Guard as an SA-16 pilot, flying a special forces operations mission. In 1963, he transferred to Kentucky Air National Guard's 123rd Tactical Reconnaissance Wing in Louisville, as an RB-57 pilot and, in 1965, became an air technician flying training instructor, flying RF-101s. He was called to active duty with the Kentucky Air National Guard in January 1968 and served in Alaska, Panama, Japan, and Korea. Upon deactivation in June 1969, he returned to the Kentucky Air National Guard as operations officer.

In October 1972, General Conaway was appointed air commander of the Kentucky Air National Guard. In December 1974, he was appointed Vice Commander of the 123rd Tactical Reconnaissance Wing which had units in Kentucky, Arkansas, Nevada and Idaho. Some of his other assignments have included duty as Wing Director of Operations, Wing Chief of Safety, Wing Chief of Standardization and Evaluation, Group Commander, Group Deputy Commander for Operations and Squadron Operations Officer.

General Conaway was recalled to active duty as Deputy Director of the Air National Guard in April 1977 and, in April 1981, he was named Director. He was reappointed Director in April 1985. On July 20, 1988 he was named as Vice Chief, National Guard Bureau. In February 1990, he was appointed as Chief, National Guard Bureau and promoted to Lieutenant General.

General Conaway is a command pilot with more than 6,000 hours in numerous types of aircraft. His many military decorations and awards include the Air Force Distinguished Service Medal, Legion of Merit, and Meritorious Service Medal. He is also the recipient of the Air Force's Eugene M. Zuckert Management Award and the Air National Guard's Order of the Sword.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I APPRECIATE THE OPPORTUNITY TO SUBMIT TO THIS JOINT COMMITTEE A BRIEF WRITTEN STATEMENT CONCERNING THE NATIONAL GUARD BUREAU'S POSITION ON WHETHER THE PROTECTIONS PROVIDED TO THOSE WHO HAVE BEEN CALLED UP ARE SUFFICIENT UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT (SSCRA) AND VETERANS REEMPLOYMENT RIGHTS OR WHETHER CURRENT LAW SHOULD BE AMENDED.

THE NATIONAL GUARD IS WORKING INTENSIVELY WITH OTHER COMPONENTS OF THE DEFENSE DEPARTMENT TO REVIEW THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT, VETERANS' REEMPLOYMENT RIGHTS, AND OTHER BENEFITS AND ENTITLEMENTS FOR RESERVE COMPONENT PERSONNEL IN CONNECTION WITH THE PRESENT CALL-UP.

THE SOLDIERS' AND SAILORS' RELIEF ACT PROVIDES AN ARRAY OF PROTECTIONS TO PERSONNEL ENTERING ON ACTIVE DUTY. THESE PROTECTIONS ALLEVIATE MANY SERIOUS PROBLEMS ASSOCIATED WITH THE INEVITABLE DISRUPTION OF CIVILIAN LIFE RESULTING FROM A CALL-UP. THE ACT DOES NOT, IN OUR OPINION, HAVE MAJOR SHORTCOMINGS OR REQUIRE SUBSTANTIAL REVISION.

FOR THE MOST PART, SSCRA HAS WORKED WELL FOR THE SERVICE MEMBERS ACTIVELY INVOLVED IN OPERATION DESERT SHIELD. WHEN PRESIDENT BUSH CALLED UP AMERICA'S RESERVE FORCES ON AUGUST 22, 1990 THOSE INDIVIDUALS LEFT TO SERVE THEIR COUNTRY IN THE MIDDLE EAST WITH SOME SENSE OF RELIEF THAT THEIR FAMILIES, PERSONAL AFFAIRS AND CIVILIAN EMPLOYMENT WERE BEING PROTECTED AND TAKEN CARE OF BECAUSE OF THIS VITAL AND IMPORTANT LAW NOW IN EXISTENCE. WE KNOW THAT THE SYSTEM IS NOT PERFECT, BUT EVEN IN ITS IMPERFECTION, IT'S THE BEST SYSTEM WE HAVE TO OFFER OUR MEN AND WOMEN THAT HAVE SWORN TO DEFEND OUR NATION AND OUR FREEDOMS.

YOU AND OTHER MEMBERS OF CONGRESS HAVE BEEN TO THE MIDDLE EAST AND VISITED OUR MILITARY MEN AND WOMEN WHO LEFT HOME, FAMILY, AND JOBS TO SERVE THIS GREAT COUNTRY OF OURS. YOU KNOW FIRST HAND THE UNSELFISH COMMITMENT THEY ARE MAKING.

THE SSCRA IS AN INTRICATE PART OF MILITARY SERVICE BENEFITS AND RIGHTS WHICH REASSURES OUR SERVICE MEMBERS OF THE QUALITY OF LIFE THEY ARE PROTECTING. THEREFORE, IT IS OUR DUTY AS LEADERS AND LAW MAKERS TO ENHANCE, STRENGTHEN AND PROTECT CURRENT LAWS TO GUARANTEE THIS VITAL PROGRAM CONTINUES TO MEET THE NEEDS OF OUR SERVICE MEMBERS DURING THEIR ABSENCE FROM THEIR FAMILIES AND PLACES OF EMPLOYMENT.

CERTAIN PROVISIONS, HOWEVER, NEED TO BE UPDATED, SUCH AS AN APPROPRIATE INCREASE IN THE MAXIMUM RENT FOR WHICH PROTECTION FROM EVICTION FOR A MEMBER OF THE ARMED FORCES IS APPLICABLE. THE ACT ALSO NEEDS TO BE TIGHTENED UP OR CLARIFIED IN SOME AREAS, IN PART TO AVOID RESTRICTIVE INTERPRETATIONS THAT HAVE BEEN APPLIED BY SOME COURTS IN THE PAST. AN EXAMPLE IS THE TECHNICAL QUESTION AS TO WHAT CONSTITUTES AN APPEARANCE BEFORE A COURT BY A SERVICE

MEMBER. ADDITIONAL CLARIFICATIONS AND PROTECTIONS AGAINST ADVERSE CREDIT IMPACT FOR MEMBERS WHO ASSERT THEIR RIGHTS UNDER THE ACT MAY ALSO BE NEEDED.

ONE OF THE MOST SERIOUS PROBLEMS THAT HAS COME TO LIGHT IS THE PROBLEM OF MEDICAL MALPRACTICE INSURANCE COVERAGE FOR MEDICAL PROFESSIONALS ORDERED TO ACTIVE DUTY. BECAUSE ALL NEW POLICIES ISSUED OVER THE PAST SEVERAL YEARS PROVIDE COVERAGE ONLY FOR CLAIMS MADE DURING THE TERM OF THE POLICY, RATHER THAN COVERAGE FOR ANY OCCURRENCES DURING THE TERM OF THE POLICY, SUCH PROFESSIONALS MUST KEEP IN FORCE THEIR POLICIES COVERING PRIOR CIVILIAN PRACTICE DURING THEIR PERIODS OF ACTIVE DUTY. THE PREMIUMS MAY EXCEED THEIR TOTAL MILITARY COMPENSATION. THE SSCRA DOES NOT PROVIDE PROTECTION FOR SUCH PERSONS AS IT NOW STANDS. THE DOD IS CONSIDERING LEGISLATIVE RELIEF TO AVOID SHORTFALLS IN MEDICAL PERSONNEL FOR THE ARMED FORCES.

NO SERIOUS PROBLEMS WITH REEMPLOYMENT RIGHTS HAVE COME TO LIGHT AS YET, BUT IT IS EVIDENT THAT SOME AREAS NEED CLARIFICATION AND CERTAIN ANOMALIES NEED CORRECTION.

MR. CHAIRMAN THIS CONCLUDES MY STATEMENT. AGAIN, I WANT TO THANK YOU AND YOUR COMMITTEE FOR YOUR SUPPORT OF THE NATIONAL GUARD IN THE PAST AND DURING THE CURRENT PERSIAN GULF CRISIS.

STATEMENT OF

JONATHAN GAFFNEY
AMVETS NATIONAL LEGISLATIVE DIRECTOR

Before the

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES HOUSE OF REPRESENTATIVES

And

COMMITTEE ON VETERANS' AFFAIRS

UNITED STATES SENATE

On

SOLDIERS AND SAILORS ACT

SEPTEMBER 13, 1990

STATEMENT OF AMVETS

Representative Montgomery and Senator Cranston, AMVETS is grateful to you and Members of both the House and Senate Veterans' Affairs Committees for giving our organization the opportunity to provide our opinions and assessment of the Soldiers and Sailors Civil Relief Act (SSCRA).

As we all know, the Soldiers and Sailors Act was passed in 1940 and reflected social and financial conditions of a era far different than today. While the underlying concerns which encouraged the Act's passage through Congress 50 years ago -- support for the men and women who make up the reserve component of our military -- have remained constant since its adoption, the needs of those members and our society have not.

In 1940, nobody could have predicted that the Guard and Reserve would occupy the position they have attained today as an active, viable, and planned component of our country's overall defense posture. The events of the past month indicate that the "Total Force" concept is here to stay. Yet with over 1 million men and women serving in the guard and reserve, the consequences of any significant recall to active duty can be far-reaching and meaningful to both reservists and society. To make this impact as manageable as possible we need to modify and add some provisions of the SSCRA.

As we have heard through the testimonies of others, some of the provisions of the SSCRA are obviously outdated, with the two most apparent deficiencies being the $150.00 per month lease limit for rental contracts and the 6% annual interest cap for mortgage and consumer loans. While AMVETS is confident that these two inadequacies -- and other shortcomings regarding insurance and legal proceedings -- will be handled appropriately by Congress, we have concerns that go beyond the original language and intent of the SSCRA. First amongst these concerns is that of discrimination against reservists in both employment and in obtaining credit.

While the language regarding veterans reemployment rights (VRR) is relatively clear and concise as outlined in the Veterans' Reemployment Rights Law (VRRL), it deals almost specifically with the employment status of guard and reserve members upon return from mobilization. AMVETS is concerned that should the current mobilization be expanded in both its scope or duration -- with a resulting disruption for large numbers of employers -- then those same employers might be apprehensive about hiring guard or reserve personnel in the future. We strongly advocate inclusion into SSCRA clear and unambiguous language which would prohibit employment discrimination based on a prospective employee's affiliation with the guard or reserve.

A second form of discrimination about which we are concerned is that of financial/credit discrimination. Any member of the guard or reserve who applies for a mortgage or consumer loan who also has the possibility of rolling his or her interest rate back to 6 percent (if mobilized) may face the same type of discrimination from a bank or lending institution faced by the prospective employee: there is too much long-term risk involved. Therefore, AMVETS strongly encourages the Committee to consider language which would protect guard and reserve members who apply for credit.

AMVETS is also concerned about the transition of the patriotic men and women back to the civilian sector from which they were mobilized. It is important that transition assistance programs must be in place and adequately staffed at major Department of Defense installations.

AMVETS, in view of the total force concept, supports the inclusion of members of the Guard and Reserve in the Priority of Employment Services as "other eligible" currently as defined in CFR 652.120(b). We encourage the out stationing of DVOP/LVER staff at major Guard and Reserve centers in addition to those currently required in 2003A 38USC. We further encourage the Congress to revisit formulas presently utilized to establish LVER/DVOP staffing levels within each state with the intent to include members of the Guard and Reserve in the formula.

AMVETS is extremely disturbed that the Department of Labor continues to procrastinate in providing their legislative proposal to enhance Chapter 43 of 38 USC. In the context of today's military environment the VRR laws take on a new meaning which impacts on all parts of the economy. We encourage the Congress to aggressively pursue introduction of VRR legislation at the earliest opportunity. Our organization will eagerly assist in development of such a proposal.

While AMVETS has long supported the rights and responsibilities of our nation's guard and reserve personnel and applaud these two committees for their timely review of the SSCRA, we also want you to contemplate the provisions of the SSCRA and Chapter 43 Title 38 USC as they apply to the millions of men and women who have retired from service in our nation's armed forces. As the fourth-largest congressionally-chartered veterans service organization, AMVETS since 1947 has advocated and advanced the concerns and responsibilities of veterans. In this regard there are literally thousands of retired veterans who are subject to recall just as are members of the guard and reserve. While these men and women obviously are not as high in order of mobilization or recall precedence, they are subjected to the same types of problems and circumstances as their guard and reserve colleagues. While some provisions of SSCRA will protect retired members recalled to active duty, we feel that a thorough study of the applicability of the SSCRA and VRR to these members would be worthwhile.

In conclusion, AMVETS stands by with our 57 National Service Officers in 36 states to assist all veterans -- including those serving in the Guard and Reserve in operation "Desert Shield" -- with questions and concerns they have regarding their rights and benefits. While we share with the millions of Americans the worries and concerns for the well-being of all the men and women serving in our nation's military, we sincerely appreciate the sacrifices they are making for our common good.

We thank this Committee for allowing us a chance to voice our concerns.

STATEMENT OF THE CHAIRMAN OF THE RESERVE FORCES POLICY BOARD OFFICE OF THE SECRETARY OF DEFENSE

HONORABLE JOHN O. MARSH, JR.

BEFORE THE HOUSE COMMITTEE ON VETERANS'
AFFAIRS AND SENATE COMMITTEE ON
VETERANS' AFFAIRS
SECOND SESSION 101ST CONGRESS

September 19, 1990

NOT FOR PUBLICATION
UNTIL RELEASED BY THE
SENATE VETERANS' AFFAIRS COMMITTEE
AND HOUSE VETERANS' AFFAIRS COMMITTEE

Mr. Chairmen and members of the Committees:

On behalf of the members of the Reserve Forces Policy Board (Board), it is a pleasure, at the request of the Committees, to file a statement reflecting the views of the Board on matters relating to the Soldiers and Sailors Relief Act, the Veterans Reemployment Rights Act, and use of the reserve components in Operation DESERT SHIELD. These views represent those of the members of the Board and do not necessarily reflect the official position of the Department of Defense, the Administration, or any other department or agency of the United States government.

The Board is by statute the "principal policy adviser to the Secretary of Defense on matters relating to the reserve components." (10 USC 175_(c)). Its recommendations are transmitted to the Secretary through the Assistant Secretary of Defense for Reserve Affairs.

In response to the President's decision to exercise his authority under 10 USC 673b to call members of the reserve components to service on connection with Operation DESERT SHIELD, I called a special meeting of the Board on August 27, 1990. At that meeting the Board received current information on the situation in the Middle East and on the status of the decision to call members of the Selected Reserve to active duty.

The Board, at that meeting, commended the Secretary of Defense and the Chairman of the Joint Chiefs of Staff for the consideration that they have given to the appropriate use of the reserve components in support of national objectives.

Following are portions of the report of the Board's special meeting that have particular relevance to matters to be addressed by these committees:

"1. Use of the Presidential Call-Up Authority Under 10 USC 673b: The Board supports the decision to exercise the Presidential authority under 10 USC 673b in support of Operation DESERT SHIELD.

Discussion: The Board's position on the use of Section 673b was adopted in December 1987 and reaffirmed in March 1989. It is as follows:

> "The Total Force Policy of the United States is fundamental to national security. This policy places a heavy reliance on the reserve components which must plan and train in peacetime for rapid mobilization to support national strategies. The unprecedented progress of the reserve components in this decade toward achieving readiness goals and improved capabilities is demonstrated routinely in operational missions. The Total Force Policy is effective and successful. The Board believes that the public, employers, Congress, and members of the reserve components should understand that while the use of volunteers from the Selected Reserve is consistent with the Total Force Policy, the use of the Presidential call-up authority of 10 USC 673b may be appropriate and required under certain circumstances."

"2. Reserve Component Volunteer Support for DESERT SHIELD: [The Board] recognizes and commends the enormous contributions being made by reserve component volunteers in support of Operation DESERT SHIELD.

Discussion. The success of the initial deployment of troops and material in Operation DESERT SHIELD is due in no small part to the outstanding response of National Guard and Reserve volunteers who have augmented the active forces from the start of the operation. These contributions are continuing in such areas as airlift, cargo handling, and air refueling. The Board recognizes that volunteers may be inappropriate and inadequate for a long period of time, but those who have volunteered need to be commended. It should be noted that only those individuals who serve for more than 30 consecutive days of active duty are eligible for full military benefits and dependent entitlements.

"3. Changes Required in Legislation and Regulations Affecting Reserve Components: [The Board recommends] review [of] legislation and regulations to ensure that reserve component members, and their families, are adequately protected and equitably treated when ordered to active duty.

Discussion: The Deputy Secretary of Defense invited the Board to identify required changes in statutes and regulations which would facilitate the Presidential call-up of reserve components. The Board noted that there are inequities in statutes and regulations which affect reserve component members who have been voluntarily or involuntarily ordered to active duty. The Board reaffirms its position that '...entitlements for members of the Reserve components and their dependents...while serving in any federal pay status, and regardless of the number of days of duty involved, be on an equal basis--identical in all respects--to those afforded the active component membership.' The following areas appear to require attention:

a. Title 50 USC, Soldiers and Sailors Civil Relief Act: Dollar limits on rent need to be updated. The Board has previously recommended, and reaffirms, that 6th QRMC guidelines be adopted.

b. Professional Liability Insurance: Professionals ordered to active duty must maintain costly malpractice insurance to protect themselves from claims arising from their civilian practice. Legislation is required to provide relief for such members ordered to active duty for more than 30 days. The Soldiers and Sailors Relief Act may provide a vehicle to address this issue.

c. Variable Housing Allowance (VHA): Reserve component members ordered to active duty should be entitled to VHA benefits from their first day of service--the same as active component members.

d. Veterans Reemployment Rights: Reemployment Rights Law, Title 38 USC 2024(g) requires revision to provide reemployment protection for reserve componant members ordered to active duty for more than 90 days.

e. Compensation for Medical Professionals: Reserve component medical professionals should receive compensation equal to active component counterparts.

f. "Thirty Day Rule": Under various sections of Title 10 USC, reserve component members (and dependents/survivors) who are ordered to active duty for less than 30 days, are not entitled to the same benefits as active component members, even though they may be performing the same mission. This is a particular problem with regard to volunteers, who have been utilized extensively since the beginning of Operation DESERT SHIELD.

g. Student Protection: Legislation is required to ensure that reserve component members who are students, and are ordered to active duty, can be reimbursed for any prepaid tuition. Protection is also required to ensure that reserve component students can reenroll upon return from active duty."

Other recommendations of the Board relating to compensation of members of the reserve components are contained in its Annual Report.

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410-9000

THE GOVERNMENT NATIONAL
MORTGAGE ASSOCIATION

STATEMENT OF ARTHUR J. HILL
PRESIDENT, GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

SUBMITTED TO THE
COMMITTEES ON VETERANS' AFFAIRS

SEPTEMBER 12, 1990

Chairman Cranston, Chairman Montgomery, and Members of the Committees, the Department of Housing and Urban Development appreciates the opportunity to present the views of the Government National Mortgage Association (GNMA) on the Soldiers' and Sailors' Civil Relief Act (SSCRA).

GNMA is a wholly-owned government corporation located within the Department of Housing and Urban Development. GNMA guarantees the timely payment of principal and interest on privately-issued investment securities that are backed by pools of FHA-insured or VA-guaranteed mortgages. Our principal mission is to support the Government's housing objectives by establishing secondary markets to channel funds from the securities market into the mortgage market, thereby increasing the supply of credit available for housing.

OVERVIEW OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AND ITS EFFECT ON GNMA SECURITIES

Congress passed the SSCRA in 1940 in order to ensure that persons called to active duty did not suffer undue hardship by defending their nation during a period of crisis. As the SSCRA relates to GNMA, service men and women called to active duty are protected by suspending enforcement of civil liabilities and providing relief from current obligations. Among other provisions, the SSCRA provides for an automatic reduction in the amount collectible on those mortgage loans made to persons who enter active military duty after obtaining the loan to an interest rate that may not exceed 6%. The amount collectible includes service charges and other fees payable in connection with any affected loan.

The law was set up in an era when interest rates were only approximately 4% and the SSCRA cap on interest rates has remained unchanged over the years. Its original intention was to protect service members who had been unexpectedly removed from civilian life from the possibility of having to pay much higher interest rates on debt obligations that were incurred prior to their call to active duty.

HUD strongly supports the primary intent of the SSCRA, which insures that service members called to active duty have some security in their personal financial affairs.

GNMA is commenting solely on the interest provision of the SSCRA referred to above due to its direct effect on its function as guarantor of the pass-through of mortgage principal and interest to GNMA security holders. This guaranty is backed by the full faith and credit of the United States and assures security holders that they will receive full and timely payment of principal and interest as stated on the GNMA certificate.

While there is no precedent to date regarding the funding of interest forgiven as it pertains to GNMA securities, GNMA is confident in its decision requiring issuers to fund any shortfall resulting from the application of the SSCRA. In particular, any issuers with pooled loans subject to the payment reduction will continue to fund the monthly principal and interest payments to the security holders based on the stated security rate.

The Office of the General Counsel of the Department of Housing and Urban Development has determined, with GNMA concurrence, that GNMA Mortgage-Backed Securities Guide 5500.1 (Guide) and the related Guaranty Agreement support the conclusions referred to above. Specifically, Guide Sections 4-2.a. and 11-3.a., and Guaranty Section 4.01. state that issuers are responsible for making timely payments of amounts due security holders whether or not timely payments are received from mortgagors. Additionally, Section 4-2.f. states, among other things, that issuers are responsible for any losses arising from condemnation or other legal proceedings affecting property securing pooled mortgages and any other costs or expenses the reimbursement of which is not specifically provided for in the Guide.

In short, GNMA is a guarantor of the mortgage pools while the individual lenders are the issuers of the pools with the contractual obligation to pay the GNMA security holders.

GNMA strongly advises issuers to respond promptly to service members requesting relief under the act.

Let me stress that GNMA is not the owner of record of the loans that collateralize the GNMA security as created by the various issuers. The owner of record for the loans is the particular lender/issuer as distinguished from the other major secondary market agencies, specifically, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation who are the purchasers of loans and the issuers of the securities of their respective organization. GNMA plays a much different role as the guarantor of GNMA mortgage-backed securities, backed by FHA-insured or VA-guaranteed loans.

This is the first time that the SSCRA has surfaced within the framework of the GNMA program, therefore, GNMA is unable to provide viable cost estimates as to the direct monetary effect of the SSCRA to GNMA issuers or within the defaulted portfolio GNMA is currently servicing.

It is feasible that service members who bought homes over the past decade with either a fixed or adjustable rate mortgage, could see their monthly payments reduced by hundreds of dollars depending on the current interest rate and the size of the mortgage loan. Information collected by GNMA from its issuers does not capture the military status of an individual borrower or whether or not the borrower is called to active duty. At this time, however, GNMA does not believe the SSCRA will have a major impact on GNMA or on its program participants.

In closing, we would like to again stress our strong support for the primary purpose of the Act--to provide service members with some sense of security over their personal financial affairs when they are called to active military duty. Obviously economic conditions have changed substantially since the Act was enacted in 1940. We feel it is appropriate to review the Act, particularly the statutory interest rate provision, and amend it to assure it accomplishes its original intent consistent with today's interest rate environment.

STATEMENT

BY

NELSON L. FINK

LEGISLATIVE ASSISTANT

MILITARY AND GOVERNMENT RELATIONS

AIR FORCE SERGEANTS ASSOCIATION

BEFORE THE JOINT COMMITTEE

ON

VETERANS' AFFAIRS

OF

THE SENATE AND HOUSE

ON

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT AS
AMENDED AND VETERANS RE-EMPLOYMENT RIGHTS

SEPTEMBER 12, 1990

Air Force Sergeants Association

INTERNATIONAL HEADQUARTERS. POST OFFICE BOX 50. TEMPLE HILLS. MD 20748

Mister Chairman and distinguished members of the Joint Veterans' Affairs Committee, thank you for the opportunity to present the views of the Air Force Sergeants Association (AFSA) regarding the Soldiers' and Sailors' Civil Relief Act as amended and the Veterans Re-employment Rights.

The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, contains provisions designed to provide all members of the Armed Forces on/or called to active duty (the Coast Guard and all officers of the Public Health Service detailed by proper authority for military duty) with temporary suspension of legal proceedings and transactions that may prejudice their civil rights by reason of their military service.

The Act does not relieve an individual from such obligation or impose any delay thereon. However, in the event of legal action, or in the event a member is unable to pay premiums on commerical insurance policies purchased prior to entry into the military service, or to pay taxes, certain relief may be afforded them by the Act, with court approval.

Article III of the Act provides that proceedings for eviction or distress with respect to any premises occupied as a dwelling by the dependents of a person in military service may be stayed for no longer than three months, provided the agreed rent does not exceed $150 per month. The $150-per-month limit has not been raised since 1966. As addressed in the Sixth Quadrennial Review of Military Compensation Report dated August 1988, it appears reasonable to adjust the $150 rate.

The QRMC considered a number of alternatives in discussion of the rent rate. AFSA believes the most appropriate would be to adopt an adjustable rent rate based on a sliding scale (by rank/pay grade), based on the national median rental costs for a particular area of the United States.

Further, we agree with the 6th QRMC recommendation that the dependents of a member of a uniformed service on active duty may not be evicted from any premises occupied as a dwelling for which the agreed rent does not exceed an amount equal to the military member's housing allowance (BAQ and VHA), without the permission of a court.

Another area of concern is the health care insurance policies that most employers are now required to provide for their employees. The Act provides for guaranty of premiums on commerical life insurance but appears not to address health care (to include dental plans).

Therefore, we recommend that Article IV, Insurance, Sections 540 to 548, be amended to include health/dental care policies.

This action would provide an adequate package of insurance coverages, not only for the reservists who are called to active duty for a short period but also to their dependents during the transition from civilian to military life, and return to civilian status.

Although, the Veterans Re-employment Rights law provides protection to reservists called to active duty, it also creates a void. Many employers, as well as employees, are faced with questions such as:

- Does my employment status change during a furlough or layoff period?
- What and how does the company's retirement fund apply to me during my absence?
- During absence, will civilian pay be adjusted for cost-of-living allowance if absence is longer than an employee's evaluation period?

While we agree that some changes are needed to both Acts, we would further recommend that an advisory panel be established for the purpose of periodically updating both Acts, incorporating the economics and entitlements of the current environment.

This concludes my prepared statement. Thank you, Mister Chairman, for the opportunity to appear before this committee. I am prepared to respond to any questions you or your distinguished colleagues may wish to ask.

NMFA
National Military Family Association
6000 Stevenson Avenue, Suite 304
Alexandria, Virginia 22304
(703) 823-NMFA

Statement of

THE NATIONAL MILITARY FAMILY ASSOCIATION, INC.

on

the Soldiers' and Sailors' Civil Relief Act
and
Veterans' Reemployment Rights

Before a joint hearing
of the

VETERANS AFFAIRS COMMITTEE
of the
U. S. HOUSE OF REPRESENTATIVES

and the

VETERANS AFFAIRS COMMITTEE
of the
U. S. SENATE

September 12, 1990

**Not for Publication
Until Released by
the Committee**

The National Military Family Association (NMFA) is a volunteer, nonprofit organization composed of members from the seven uniformed services, active duty, retired, and reserve, and their family members and survivors. NMFA is the only national organization whose sole focus is the military family and whose goal is to influence the development and implementation of policies which will improve the lives of those family members. NMFA appreciates this opportunity to express its views.

The Soldiers' and Sailor's Civil Relief Act of 1940 has been amended several times. However, the current mobilization of reserve component members has raised several questions as to the current adequacy of protections in the law for these service members and their families. In addition, several similar questions have been raised in relation to the Veterans' Reemployment Rights Law in 38 U.S.C. Sec. 20021-2016.

The Soldiers' and Sailors' Civil Relief Act protects dependents as well as service members from eviction. However, it only applies to dwellings where the rent does not exceed $150/month. A scan of For Rent ads in almost any city newspaper would find few, if any, habitable dwellings for this sum. This amount is even more ludicrous in high cost of living areas and, in effect, provides no eviction protection for service members or their families.

The Act's protective provisions for debts incurred prior to the servicemember's order to active duty appear not to apply to such debts as dental or medical bills. When a single dental crown can easily cost $400 and a brief stay in a hospital can run to many thousands of dollars, it would seem that some relief should be provided for these debts as well.

Questions related to the Veterans' Reemployment Rights law include:

1. If persons holding jobs similar to that which the returning service member held have been laid off, under what law would the service member be entitled to unemployment compensation? Under current law, military members qualify for unemployment compensation after four to five weeks and are allowed to draw such compensation for only thirteen weeks. Civilians, on the other hand, can become eligible within one week and draw unemployment compensation for twenty-six weeks.

2. When service members enter active duty, their civilian employer is allowed to terminate medical coverage for them and their families. When the service members are reemployed will pre-existing condition clauses be in effect? Will a child born with a birth defect be covered? Will any illness incurred by a family member during the member's active duty be covered? How soon would such coverage begin? Will pregnancy be covered? Does it make any difference if the civilian employer self insures or contracts with another company for health care? Who covers service members and their families during the 90 days they are allowed to seek reemployment?

3. Can service members continue to contribute to an employer's retirement fund during the active duty period? Can the employer cease to contribute to an employee's retirement fund during the period of active duty?

4. Can an employer's life insurance carrier request a medical exam upon the service member's reemployment? Can they refuse to cover returning service members?

5. Where will returning service members stand on waiting lists for employer provided child care? Other benefits?

The National Military Family Association does not question the intent of the two laws, but questions if they protect service members and their families as originally intended. Since enactment of these laws, both the economy and benefits normally considered to be part of employment have changed significantly.

CRS
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Memorandum August 27, 1990

TO : Senate Veterans' Affairs Committee
Attention: Michael Cogan

FROM : Brian W. Cashell
Analyst in Quantitative Economics
Economics Division

SUBJECT : Inflation adjustment to rent relief provision of the Soldiers and Sailors Civil Relief Act of 1940.

The Soldiers and Sailors Civil Relief Act of 1940, as amended in March 1966, includes a provision which provides for rent relief in situations where monthly rent payments are $150 or less. Specifically, the Act prohibits the eviction (without court order) of individuals and their dependents covered under the Act for nonpayment of monthly rent that is $150 or less.

You requested estimates which would reflect the current equivalent of that $150 amount adjusted for inflation. Two price indexes are used here to adjust the $150, the all-items Consumer Price Index for All Urban Consumers (CPI-U, 1982-1984 = 100) and the residential rent component index of the CPI-U. Both of these indexes are published by the Department of Labor, Bureau of Labor Statistics. The indexes for March 1966 and July 1990 were used. Table 1 presents the index values and the resulting adjusted dollar amounts.

TABLE 1. Adjusted Rent Relief Threshold

	March 1966	July 1990	adjusted amount
CPI-U, all items	32.1	130.4	$609.35
Residential Rent	41.3	138.7	$503.75

Source: Department of Labor, Bureau of Labor Statistics.

If you have any further questions, please call at 7-7300.

Congressional Research Service
The Library of Congress

Washington, D.C. 20540

AMERICAN LAW DIVISION

MEMORANDUM

August 27, 1990

SUBJECT: The Interest Rate Cap Of The Soldiers' And Sailors' Civil Relief Act Of 1940, As Amended

AUTHOR: Robert B. Burdette

This memorandum examines available evidence of the intended meaning of the provision of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, that entitles persons serving on active duty in the Armed Forces of the United States to pay no more than six percent per year on mortgages, revolving credit accounts, and other debts. The provision was not included in the original Act of 1940. It was added by legislation enacted in 1942. The discussion below is divided into two parts. The first examines the legislative history of the legislation in a search for clues to the congressional intent in enacting the cap. The second part examines how courts have interpreted the application of the cap.

RELEVANT LEGISLATIVE HISTORY

Section 6 of the "Soldiers' and Sailors' Civil Relief Act Amendments of 1942," Chapter 581, 56 STAT. 769, 771 (enacted October 6, 1942), provided as follows:

> Article II of such Act [*i.e.*, the Soldiers' and Sailors' Civil Relief Act of 1940] is amended by adding at the end thereof the following:
>
> > "Sec. 206. No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942, bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term "interest" includes service charges,

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> renewal charges, fees, or any other changes (except bona fide insurance) in respect of such obligation or liability."

This provision was not included in the version of the bill in question (H.R.7164) passed by the House of Representatives but rather was added as part of a Senate substitute.

In relevant part, the report of the Senate Committee on Military Affairs, Report No. 1558, 77th Congress, 2d Session (July 27, 1942), states, as follows:

> The Committee on Military Affairs, to whom was referred the bill (H.R.7164) to amend the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, ... to provide further relief for persons in military service, ... having considered the same, report favorably thereon, with an amendment, and recommend that the bill do pass.
>
> * * *
>
> GENERAL STATEMENT
>
> The Soldiers' and Sailors' Civil Relief Act of 1940 became law October 17, 1940, and, as expressed in its title, was for the purpose of promoting and strengthening the national defense by suspending enforcement of certain civil liabilities of certain persons serving in the Military and Naval Establishments. Important provisions of the Civil Relief Act extend only to obligations originating prior to the date of its enactment. Nearly 14 months later came the attack on Pearl Harbor and the consequent revision of plans and change of conditions. Persons who prior to December 7, 1941, had no thought of being selected for service or who had been selected and discharged or placed in the Enlisted Reserve Corps suddenly found themselves in a new status and in the meantime had undertaken new obligations.
>
> * * *
>
> *** Any doubts that may arise as to the scope and application of the act should be resolved in favor of the person in military service involved.
>
> The committee believe that additional legislation at this time to protect persons in the military and naval service is necessary in order to carry out the purposes of the original Civil Relief Act and to maintain and protect the morale and efficiency of our armed forces.

EXPLANATION BY SECTIONS

SECTION 6

> Section 6 adds a new section 206 **which prohibits interest at a rate in excess of 6 percent upon obligations of persons in military service, incurred prior to his entry therein, unless such service has not materially affected his ability to pay. The present law does not prevent an accumulation of excess interest. The only relief now authorized for such cases is a stay of any proceeding commenced on such a claim during the period of military service.**[1]

Although the foregoing quotation from the Senate committee report does not explicitly state that interest in excess of six percent that would otherwise have been due from the servicemember would be forgiven rather than deferred, two parts of the quotation seem noteworthy. Doubt or ambiguity with respect to either scope or application were explicitly intended to be "resolved in favor of the person in military service" and, by strong implication, the new legislation was intended to "prevent an accumulation of excess interest."

The conference report on the bill (Report No. 2481, House of Representatives, 77th Congress, 2d Session) offers little help in determining relevant congressional intent. The only relevant statement is a recommendation to the effect that, except with respect to certain provisions concerning insurance, "the House recede from its disagreement to the amendment of the Senate."[2]

The Senate passed its version of H.R.7164, including the interest rate cap, virtually without debate.[3] Debate on passage of the conference report in the Senate[4] and in the House of Representatives[5] was very brief and included no specific references to the interest rate cap.

Thus, relevant legislative history is limited essentially to the two parts of the quoted excerpt highlighted above.

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[1] See Report No. 1558, *ibid.*, at pages 1, 2, and 4.

[2] *Ibid.* at page 1.

[3] See *Congressional Record*, Vol. 88, Part 5, at pages 6705-6707.

[4] See *Congressional Record*, Vol. 88, Part 6, at pages 7414-7415.

[5] See *Congressional Record*, Vol. 88, Part 6, at pages 7543 and 7545.

RELEVANT CASE LAW

Section 206 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, is codified at 50 App. U.S.C. §526. The U.S.C.A. lists only four annotations with respect to this provision. None cites a judicial decision directly relevant on point. One, however, does include some judicial language which seems at least tangentially relevant. The case is *State ex rel. Commissioners of the Land Office* v. *Warden*, 197 Okla. 97 (1946), in which the Supreme Court of the State of Oklahoma held, *inter alia*, that the period during which the interest rate cap applies covers only service occurring after October 6, 1942. In the course of stating this part of its holding, the Court reasoned, as follows:

> The amount of the principal indebtedness due August 15, 1934, was correctly fixed at $1,793.75. The rate of interest thereon from said date to July 21, 1941, when defendant Colbert Smith entered the military service, at 10%, was correct. But the trial court reduced the rate of interest from 10% to 6% from and after July 21, 1941. Title 50 U.S.C.A. App. §526 fixes the period of military service during which the maximum rate of 6% interest is chargeable against a person in the military service as that which occurs after the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (Oct. 6, 1942). The court was in error in allowing the reduced rate of interest during the period between July 21, 1941, and October 6, 1942.[6]

The Court speaks twice here of a "reduced rate" and once of a "maximum rate of 6% interest ... chargeable against a person in the military service" but never makes any mention of any subsequent recovery on the part of the lender of the amount of interest foregone because of the reduction. In other words, the Court's references are compatible with an interpretation of the provision under which any interest above 6% which otherwise would have been due is *permanently* forgiven. If the difference between the rate specified in the loan agreement concerned and the statutory 5% rate could eventually be recovered by the lender as the result of stretching out the required number of payments, then no effective "reduction" in rates would have occurred. An amount of deficiency would simply have been deferred.

A computer-assisted Sheperdization of the Oklahoma Supreme Court's *Warden* decision identified six citations of it but none related to the interest rate cap.[7]

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[6] *Ibid.*, at page 102.

[7] Three of the citations were to the *American Law Reports* system and did involve the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. See 40 ALR 2d 1277; 35 ALR Fed. 664; and 35 ALR Fed. 703.

CONCLUSIONS

As demonstrated above, the precise meaning of the provision of the Soldiers' and Sailors' Civil Relief Act Of 1940, as amended, which restricts interest payable by servicemembers on debts incurred prior to their entry into service to no more than 6 percent per year, unless a court determines that entry into service has not materially affected their ability to pay, cannot be ascertained with certainty from the relevant legislative history or existing judicial precedent. However, it should be noted that such guidance as can be derived from relevant legislative history and case law offers *some support* for the proposition that interest in excess of the prescribed six percent rate that would otherwise accrue during the period of active service must be *permanently forgiven* by the lender but that same legislative history and case law affords *no support* for the proposition that the lender can recover such excess interest *subsequent to the active service* of the borrower (for example, through additional payments that simply stretch out the period over which the principal is to be repaid.

Robert B. Burdette
Robert B. Burdette
Legislative Attorney

Legal Assistance Guide: Soldiers' and Sailors' Civil Relief Act

(other guides in this series)

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JA 260
September 1990

Legal Assistance Branch
Administrative and Civil Law Division
The Judge Advocate General's School
Charlottesville, Virginia

FOREWORD

This volume is part of a new series of Legal Assistance Guides being developed to replace the Legal Assistance Officer's Deskbook and Formbook and to integrate former All States Guides with other publications into a comprehensive reference work.

This series is designed to provide the legal assistance attorney with guidance and samples of the forms and letters most commonly needed in serving legal assistance clients. The series now includes the following individual titles.

Legal Assistance Office Administration Guide
Legal Assistance Deployment Guide
Legal Assistance Consumer Law Guide
Legal Assistance Family Law Guide
Legal Assistance Notarial Guide
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This publication, JA 260, is intended to provide information and reference material for the military lawyer. It replaces Department of the Army Pamphlet 27-166, Soldiers' and Sailors' Civil Relief Act (August 1981). While it may suggest workable solutions to legal problems, it does not represent Department of the Army policy and is not directive in nature. Comments concerning laws, regulations, cases, or other matters represent the opinion of an individual attorney in legal assistance. Use of masculine pronouns in this publication represents both the masculine and feminine gender, unless otherwise specifically stated.

The series is part of the continuing effort to improve and expand the resources available to legal assistance practitioners. To help us better serve you, please send your comments and suggestions to The Judge Advocate General's School, ATTN: JAGS-ADA-LA, Charlottesville, VA 22903-1781.

Contents (Listed by page number)

Soldiers' and Sailors' Civil Relief Act

Chapter 1

Page

Introduction 1-1
Historical background 1-1
Organization of this guide. 1-1
Material effect 1-2
Constitutionality and short title 1-3
The purpose and scope of the Act 1-4
Notice of benefits to persons in and persons entering military service 1-6

Chapter 2

General provisions 2-1
Purpose and Scope 2-1
Definitions 2-1
   a. Members of the military establishment 2-2
      (1) Army 2-2
      (2) Air Force 2-3
      (3) Navy 2-3
      (4) Marine Corps 2-4
      (5) Coast Guard 2-4
      (6) Officers of the Public Health Service 2-4
   b. Persons not members of the military establishment 2-4
   c. Active Federal service 2-5
   d. Preliminary training 2-5
   e. Divestment of rights 2-6
   f. Period of time which the Act covers 2-6
Territorial application; jurisdiction of courts; and form of procedure 2-7
   a. General application 2-7
   b. Judicial proceedings 2-8
Persons liable on serviceman's obligation 2-9
   a. Primarily and secondarily 2-10
   b. Codefendants 2-12
   c. Criminal bail bond sureties 2-12

Extension of benefits to citizens serving with forces of war allies 2-13
Extension of benefits to persons ordered to report for induction or military service . . . 2-14
Waiver of benefits of the Act 2-15
Transfers to take advantage of the Act 2-16
Certification of period of military service--Treatment of missing persons 2-17
Power of attorney--extension for period in missing status 2-18
Revocation of interlocutory orders 2-19
Separability of provisions 2-20
Termination date 2-20
Inapplicability of Soldiers' and Sailors' Civil Relief Act of 1918 2-21

Chapter 3

General relief: default judgments, affidavits, bonds, attorneys for persons in service 3-1
Purpose and scope 3-1
Procedure upon default by defendant 3-2
  a. Affidavit 3-2
    (1) When required 3-2
    (2) Content 3-4
    (3) Persons protected 3-4
    (4) Effect of not filing affidavit 3-5
  b. Court appointed attorney 3-5
  c. Bond requirement 3-6
Penalty for false affidavit 3-6
Court appointed attorney 3-7
  a. General 3-7
  b. Responsibilities of appointed attorney 3-8
  c. Compensation of appointed attorney 3-8
  d. Acts not binding on defendant 3-9
Reopening default judgments 3-10
  a. Requirements to apply for reopening 3-10
    (1) Judgment during service or within 30 days thereafter 3-10
    (2) Application during service or within 90 days thereafter 3-11
    (3) Must have made no appearance 3-11
  b. Criteria for reopening judgment 3-11
    (1) Prejudiced by military service 3-11
    (2) Meritorious or legal defense 3-12
  c. Rights of a bona fide purchaser 3-13

Stay of proceedings where military service affects conduct thereof 3-13
  a. The nature of section 201 "stay" 3-14
    (1) Who may apply 3-14
    (2) When and where application may be made 3-15
  b. Court, powers to stay 3-15
    (1) Granting a stay 3-15
    (2) Who has the burden of proof to show "material effect" 3-17
  c. Minimum evidentiary requirements 3-17
Fines and penalties on contracts 3-19
Stay on vacation of execution of judgments, attachments 3-20
Duration and term of stays; codefendants not in service 3-21
Statute of limitations as affected by period of service 3-22
Maximum rate of interest 3-24
Federal income taxes 3-25

Chapter 4

Rent, installment contracts, mortgages, liens, assignments, leases 4-1
Purpose and scope 4-1
Eviction and distress 4-1
  a. General 4-2
  b. Application 4-2
  c. Action in court; material effect 4-3
  d. Nature and extent of relief for lessee . . . 4-4
  e. Extension of relief to lessor 4-4
  f. Compulsory rental deductions 4-4
Installment contracts 4-5
  a. General 4-6
  b. Application 4-6
  c. Court action required 4-6
  d. Nature and extent of relief 4-7
  e. Material effect 4-8
  f. Criminal sanctions 4-8
Mortgage foreclosures 4-9
  a. General 4-10
  b. Application 4-10
  c. Action in court 4-11
  d. Nature of ownership 4-11

- e. Material effect 4-12
- f. Nature of relief 4-13

Anticipatory, applied for relief 4-14
- a. General 4-15
- b. Application 4-16
- c. Action in court 4-16
- d. Nature of relief 4-17

Personal property repossession appraisals 4-18
- a. General 4-18
- b. Application 4-18

Termination of leases by lessees 4-19
- a. General 4-20
- b. Application 4-20
- c. Procedural requirements 4-21
- d. Return of security or prepaid rent 4-21
- e. Lessor's rights 4-22

Rights of life insurance assignees; enforcement of storage liens 4-22
- a. Life insurance 4-23
- b. Storage liens 4-24

Extension of benefits to dependents 4-24

Chapter 5

Insurance 5-1

Purpose and scope 5-1
- a. General 5-1
- b. Application 5-1
- c. Nature and extent of relief 5-2

Definitions 5-3

Persons entitled to benefits 5-4

Form of application 5-5

Lapse of policies for nonpayment of premiums 5-6

Rights and privileges of insured 5-6

Settlement of policies during protection 5-7

Guaranty of premiums and interest 5-7

Regulations; finality of determinations 5-8

Prior act 5-8

Chapter 6

Taxation 6-1
Purpose and scope 6-1
Taxes respecting personalty, money, credits, or realty; sale of property to enforce collection; redemption of property sold; penalty for nonpayment; notice of rights to beneficiaries of section 6-1
  a. General 6-2
  b. Property protected 6-2
  c. Realty 6-3
  d. Protection provided 6-3
    (1) Sale of property 6-3
    (2) Right of redemption 6-3
Income taxes; collection deferred; interest; statute of limitations 6-4
  a. General 6-5
  b. Restrictions by Internal Revenue Service (IRS) 6-5
  c. State income tax 6-5
  d. Filing 6-6
  e. Nonapplicability of section 205 6-6
Residence for tax purposes 6-6
  a. General 6-7
  b. Income tax 6-8
  c. Real property 6-10
  d. Tangible nonbusiness personal property . . 6-10
    (1) Sales and use taxes 6-10
    (2) Ad valorem tax 6-11
      (a) Constructive placement 6-12
      (b) Property located on federally controlled lands 6-12
      (c) Motor vehicles 6-12
      (d) Mobile homes 6-13
  e. Intangible nonbusiness personal property 6-14
    (1) Income 6-14
    (2) Ad valorem tax 6-14
    (3) Transfer taxes 6-14
  f. Motor Vehicle Operator Permits 6-14
  g. Business Property 6-15

Chapter 7

Public lands 7-1
Purpose and scope 7-1
Rights to public lands not forfeited; grazing lands 7-1
Homestead entries and settlement claims; service as equivalent to residence and cultivation 7-2
Same; death or incapacity during or resulting from service as affecting rights; perfection of rights 7-2
Desert-land entries; suspension of requirements 7-3
Mining claims; requirements suspended 7-4
Mineral permits and leases; suspension of operations and term of permits and leases . . . 7-5
Right to take action for perfection, defense, etc., of rights as unaffected; affidavits and proofs 7-6
Irrigation rights; residence requirements suspended 7-6
Distribution of information concerning benefits of article; forms 7-7
Homestead entryman permitted to leave entries to perform labor 7-7
Land rights of persons under 21 7-8
Extension of benefits to persons serving with war allies of the United States 7-8

INDEX. I-1

Chapter 1

Introduction

1-1. Historical background

The very nature of military service often compromises the ability of servicemembers to fulfill their financial obligations and to assert many of their legal rights. Congress and the state legislatures have long recognized the need for protective legislation. During the Civil War, the United States Congress enacted an absolute moratorium on civil actions brought against Federal soldiers and sailors, and various southern states enacted similar legislation.[1] During World War I, Congress passed the Soldiers' and Sailors' Civil Relief Act of 1918.[2] The 1918 statute did not create a moratorium on actions against servicemembers, but it directed trial courts to take whatever action equity required when a servicemember's rights were involved in a controversy.

The present Federal legislation. The Soldiers' and Sailors' Civil Relief Act of 1940[3] is essentially a reenactment of the 1918 statute. Experience during World War II and subsequent armed conflicts made certain changes in the statute necessary. The first of these amendments was enacted in 1942.[4] In amending the Act, Congress was motivated in part by the desire to override court decisions that in some instances had led to restrictive interpretations of the Act.[5] The latest amendment occurred in 1972.[6] It extended the effective period of a power of attorney executed by a Vietnam-era servicemember who subsequently was missing in action.[7]

1-2. Organization of this guide

This guide generally follows the order of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended. Four exceptions are the combination of Article I, General Provisions, and Article VI, Administrative Remedies, in Chapter 2; the combination of Article II, General Relief, and Article VII, Further Relief, in Chapter 3; the dividing of Article V, Taxes and Public Lands, into two chapters, Chapter 6, Taxes, and Chapter 7, Public Lands; and the inclusion of Section 1, Short Title (50 U.S.C. App. § 501), Section 100, Purpose and Scope of the Act

(50 U.S.C. App. § 510), and Section 105, Notice of Benefits (50 U.S.C. § 515), in this chapter.

Throughout this guide when the abbreviation "SSCRA" and the term "Act" are used they shall refer to the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, unless otherwise stated. The guide will refer to various sections of the legislation itself, rather than to codified sections of the U.S. Code. Lawyers researching specific problems should also consult an annotated copy of the U.S. Code for current references to state and federal decisions.

1-3. Material effect

A central equitable concept, expressed in slightly varying statutory language, is embodied in all of the Act's relief provisions. It is the concept of "material effect."[8] In almost every case involving a servicemember, trial courts are required to form an opinion of the extent to which the servicemember's military service has materially affected the particular situation. After this crucial determination has been made, either in favor of or adversely to the servicemember, the court may proceed with or stay the case at bar.

The concept of material effect comes into play in two broad, and sometimes interconnected, factual patterns. The patterns might be referred to as (1) that of the ability to protect rights and (2) that of the ability to meet financial obligations. Difficulties in both areas frequently arise as they represent the most common contexts in which courts apply the provisions of the Soldiers' and Sailors' Civil Relief Act.

Factual patterns giving rise to disputes about the existence and extent of servicemembers' liability or obligations raise the question of the servicemembers' ability to protect their rights. Trial courts are called upon to decide whether military service does, in fact, materially affect the servicemember's ability to protect his rights. In this context, the servicemember is usually seeking a delay--a stay in the proceedings until personal appearance is possible.

Material effect problems arise also in a purely financial milieu. Here the existence of a fixed obligation or a liquidated liability is admitted. Servicemembers put in issue the question of whether their military service has materially affected their ability to discharge, in the previously agreed upon manner, their admitted financial obligations. Trial courts concern themselves with the servicemember's financial situation. After evaluating the effect of military service, the court may either grant a stay of proceedings or some partial relief if the servicemember is equitably entitled to it, or deny relief entirely.

In some cases, the two common factual patterns are commingled. The existence and extent of a financial obligation, for example, may not be in issue in a particular case. But, the two parties defendant in the same case may have a very real dispute as to the existence and extent of their individual liabilities on the admitted obligation. If one defendant is a servicemember, the application of the concept of material effect might be readily determined without his presence if the sole issue is his ability to meet the financial obligation. When the issue of ultimate liability is added, however, the servicemember's physical presence may well be required to decide justly the incidence of liability. Therefore, in considering individual cases falling within the purview of the relief provisions of the Act, judges and attorneys representing servicemembers must be aware of and understand fully the differences in the burden and the elements of proof required to establish the material effect of military service.

1-4. Constitutionality and short title

Section 1

> This Act may be cited as the Soldiers' and Sailors' Civil Relief Act of 1940. (50 U.S.C. App. § 501).

The power of Congress to pass legislation as contained in the Act was subject to favorable judicial action shortly after the Civil War.[8] The 65th Congress also wrestled with the constitutionality of the proposed Act of 1918, but decided in favor of it.[10] A line of cases from federal and state courts supported this view.[11]

When the current Act was challenged in the case of Dameron v. Brodhead,[12] the Supreme Court held that Congress could pass legislation such as the Act by virtue of its power "to declare war"[13] and "to raise and support armies."[14]

In short, legislation conferring civil relief for members of the military service has survived judicial scrutiny from the days of the Civil War until the present.

1-5. The purpose and scope of the Act

Section 100

> In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force. (50 U.S.C. App. § 510.)

While not expressing any substantive statutory provisions, Section 100 has been a guide for courts construing the Act. Whether upholding or rejecting a claim, courts will often include wording of this section or their interpretation of it to give weight to their decisions. Generally, courts have been favorable to the servicemember. The U.S. Supreme Court has declared that the Act must be read with "an eye friendly to those who dropped their affairs to answer their country's call."[15]

A majority of Federal and state courts have construed the present Act and the Act of 1918 in this spirit.[16]

A few of those whom the Act is intended to protect will abuse its purpose. For instance, the Act "may not be employed to enable one who had flouted his obligations in civilian life to obtain indefinite delay."[17] The Act itself has provided for abuses by not granting protection in those actions in which an "interest, property, or contract" has been transferred merely to take advantage of the Act.[18] Other cases, however, have indicated the Act is also designed to protect rights of individuals having causes of action against persons in the military service.[19]

While the Act is intended to provide civil remedies, Congress has reinforced the spirit of Section 100 by imposing criminal penalties when failure to comply would thwart equitable civil relief.[20]

On the other hand, the Act is not a panacea for every legal problem of a civil nature facing the servicemember. It will not, for instance, help rescind a rental agreement or a contract for the purchase of an automobile or a set of encyclopedias entered into after entry onto active duty. There are a myriad of situations in which the Act will not apply.

The purpose of this publication is to provide guidance to the military lawyer giving initial advice to a legal assistance client. It may be used to provide the servicemember with an immediate defense to a potential adversarial proceeding. In this regard, provisions of Section 100 reinforce arguments based on the provisions of substantive sections. For the adversary not acting in good faith, however, the local assistant United States attorney may intervene if a criminal penalty is provided. This guide is intended to be used as a guide and, therefore, should be supplemented by whatever additional legal research is necessary to meet the requirements of the military client.

1-6. Notice of benefits to persons in and persons entering military service

Section 105

> The Secretary of the Army and the Secretary of the Navy shall make provisions, in such manner as each may deem appropriate for his respective Department, to insure the giving of notice of the benefits accorded by this Act to persons in and to persons entering military service. The Director of Selective Service shall cooperate with the Secretary of the Army and the Secretary of the Navy in carrying out the provisions of this section. (50 U.S.C. App. § 515.)

The Department of Defense has published a pamphlet[21] which provides general information on the relief available under the Act. This pamphlet should be available to each individual upon entrance into the service.[22]

Instruction on the provisions of the Act is also required during an early period of military training.[23] Because this instruction is conducted at such an early stage, legal assistance[24] and preventive law[25] programs should remind servicemembers of the Act on a continuing basis. Judge advocates should also ensure local bar associations and recruiting stations are sufficiently informed to advise individuals of the Act before they enter active duty. This will enable prospective servicemembers to invoke the Act in a timely manner.

FOOTNOTES

1. Act of June 11, 1864, ch. 118, 13 Stat. 123. Robinson, Justice in Grey (Harvard Univ. Press, 1941), pp. 83-88.

2. Act of Mar. 8, 1918, ch. 20, 40 Stat. 440.

3. Act of Oct. 17, 1940, ch. 888, 54 Stat. 1178.

4. Act of Oct. 6, 1942, ch. 581, 56 Stat. 769. Minor changes were made in the Act of Jan. 20, 1942, ch. 10, 56 Stat. 10; Act of May 13, 1942, ch. 303, 56 Stat. 276; and Act of Oct. 21, 1942, ch. 619, 56 Stat. 964.

5. S. Rep. No. 1558, 77th Cong., 2d Sess. 2 (1942):

> The purpose of the reported bill is to make available additional and further relief and benefits to persons in the military and naval forces and, in some instances where there has been doubt as to whether particular transactions or proceedings are within the scope of the Civil Relief Act, a new section on language has been added for the purpose of clarification only and to carry out the original intent of the Congress, but with no intent to exclude from the provisions of the Act any transaction or proceeding now included.

6. Act of October 24, 1972, Pub. L. No. 92-540, Title V, § 504(2), 86 Stat. 1098.

7. The present law is found in 50 U.S.C. App. §§ 500-548, 560-591 (1982).

8. "Material effect" and variations of the term are essential elements of the following sections of the Act: §§ 201, 202, 203, 206, 300(2), 301(3), 302(2), 305(1) and (2), 306, 500(2), 513 and 700(1).

9. Steward v. Kahn, 78 U.S. (11 Wall.) 493, 507 (1870); "The power to pass [relief legislation] is necessarily

implied from the powers to make war and suppress insurrection."

10. H.R. Rep. No. 181, 65th Cong., 1st Sess. (1917). Possible objections considered were: Art. I, § 10, "No State shall . . . pass any . . . law impairing the obligation of contracts," and the protections guaranteed by the Fifth Amendment.

11. E.g., Clark v. Mechanics' American Nat. Bank, 282 F.2d 589 (8th Cir. 1922); Konkel v. State, 168 Wis. 335, 170 N.W. 715 (1919).

12. Dameron v. Brodhead, 345 U.S. 322 (1953).

13. U.S. Const., Art. 1, § 8, cl. 11.

14. Id. cl. 12.

15. Le Maistre v. Leffers, 333 U.S. 1, 6 (1948).

16. E.g., Plesha v. U.S., 227 F.2d 624 (9th Cir. 1955), aff'd, 352 U.S. 202 (1957) (construed liberally to benefit servicemen and veterans); Hurwitch v. Adams, 151 A.2d 286 (Del. Super. 1959), aff'd, 155 A.2d 591 (1959) (broad interpretation for benefit of those it was designed to assist); Application of Packard, 187 Misc. 400, 60 N.Y.S.2d 506 (1946) (construed liberally). McCoy v. McSorley, 119 Ga. App. 603, 168 S.E.2d 202 (1969) (Section 501 et seq. . . . should be liberally construed in favor of servicemember); Feldman v. Grelewicz, 397 N.Y.S.2d 355, 91 Misc. 2d 147 (1977) (purpose of section 501 et seq. to ensure persons in the military were fully informed of legal proceedings, and have adequate time to appear and protect their rights); Hanson v. Crown Toyota Motors Inc., Utah, 572 P.2d 380 (1977) (intent of section 501 et seq. to protect one's property during a period of military service). In addition see United States v. Kaufman, 453 F.2d 306 (C.A.N.Y. 1971); United States v. State of Illinois, 387 F. Supp. 638 (E.D. Ill. 1975); Zaki v. Bryan, 403 N.Y.S.2d 765, 91 Misc. 2d 147, ED. A.D. 1018 (1978). See also S. Rep. No. 1558, 77th Cong., 2d Sess. 6 (1942): "Any doubts that should arise as to the scope and application of the act should be resolved in favor of the person in military service involved."

17. Franklin Soc. for Home-Building & Savings v. Flavin, 265 App. Div. 720, 721, 40 N.Y.S.2d 582, 583, aff'd, 291 N.Y. 530, 50 N.E.2d 653, cert. denied 320 U.S. 786 (1943). See also Diamond v. United States, 344 F.2d 703, 170 Ct. Cl. 166 (1965); Keefe v. Spangenberg, 533 F. Supp. 49 (D.C. Okla. 1981).

18. SSCRA § 600. For a discussion of this provision see para. 2.8, infra.

19. Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975).

20. SSCRA §§ 200, 300, 301, 302, 304, 305. These provisions are discussed in chapters 3 and 4.

21. Department of Defense Pamphlet, No. PA-6B, Your Personal Affairs (Feb. 10, 1977). This pamphlet is also cited as DA Pam 360-524.

22. There are presently no provisions for furnishing information on the Act to individuals granted certain rights prior to entry into the service under the provisions of Section 106 of the Act. These rights are discussed in para. 2.6., infra.

23. Army Reg. 612-201, Personnel: Processing Control and Distribution of Personnel at U.S. Army Reception Battalions and Training Centers (26 May 1987).

24. Army Reg. 27-3, Legal Services: Legal Assistance (10 March 1989).

25. Id.

Chapter 2

General Provisions

2-1. Purpose and scope

The purpose of this chapter is to define and identify the class of persons protected by the Act. Additionally, it deals with how and when this protected status attaches, the effect of this status, and, ultimately, how and when it can be modifed or terminated.

2-2. Definitions

Section 101

(1) The term "person in the military service", the term "persons in military service", and the term "persons in the military service of the United States", as used in this Act, shall include the following persons and no others: All members of the Army of the United States, [also includes members of the Air Force by virtue of sec. 305(a), National Security Act of 1947 (5 U.S.C. 171 (1)).], the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term "military service", as used in this Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms "active service" or "active duty" shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) The term "period of military service," as used in this Act, shall include the time between the following dates: For persons in active service at the date of the approval of this Act it shall begin with the date of approval of this Act; for persons entering active service after the date of this Act, with the date of entering active service.

It shall terminate with the date of discharge from active service or death while in active service, but in no case later than the date when this Act ceases to be in force.

(3) The term "person", when used in this Act with reference to the holder of any right alleged to exist against a person in military service or against a person secondarily liable under such right, shall include individuals, partnerships, corporations, and any other forms of business association.

(4) The term "court", as used in this Act, shall include any court of competent jurisdiction of the United States or of any State, whether or not a court of record. (50 U.S.C. App. § 511).

a. Members of the military establishment. The threshold question confronting courts in cases involving the Soldiers' and Sailors' Civil Relief Act is the status of the party seeking the benefits of the Act. The court must determine whether the party is a "person in the military service" of the United States as defined by the first sentence of section 101(1), the dependent of such a person, a person primarily or secondarily liable on an obligation with such a person, or a person to whom the Act's coverage is specifically extended in particular situations.

In defining those who are "persons in the military service of the United States," the first sentence of section 101(1) unequivocally states that only members of the organizations listed "and no others" are such persons. This statutory language has remained unchanged since 1940 when it was drafted and does not incorporate the changes made by Congress in the organization of the national military establishment since that date. Congress intended that all members of the military establishment be covered by the Act.[1] The definitions contained in other Federal statutes, particularly those in Title 10, United States Code, help determine which members of the military are covered by the Act.

(1) Army. The term "Army of the United States" contained in this section is synonymous with the term

"Army" used throughout Title 10, United States Code. The components of the Army are defined as--[2]

(a) the Regular Army, the Army National Guard of the United States, the Army National Guard while in the service of the United States, and the Army Reserve; and

(b) all persons appointed or enlisted in, or conscripted into, the Army without component.

(2) Air Force. The Air Force was established as a separate military service by the National Security Act of 1947. Pursuant to the saving provisions in section 305a of that Act, all laws then relating to Army personnel became applicable to the personnel of the Air Force. The Soldiers' and Sailors' Civil Relief Act of 1940 was among those laws. The components of the Air Force are defined as--[3]

(a) the Regular Air Force, the Air National Guard of the United States, the Air National Guard while in the service of the United States, and the Air Force Reserve;

(b) all persons appointed or enlisted in, or conscripted into, the Air Force without component; and

(c) all Air Force units and other Air Force organizations, with their installations and supporting and auxiliary combat, training, administrative, and logistic elements; and all members of the Air Force, including those not assigned to units, necessary to form the basis for a complete and immediate mobilization for the national defense in the event of a national emergency.

(3) Navy. The term "United States Navy" contained in this section is synonymous with the term "Navy" used in Title 10, United States Code. The Navy includes "the Regular Navy, the Fleet Reserve, and the Naval Reserve."[4] A person, male or female, who is appointed or enlisted in or inducted or conscripted into the Navy is a "member of the naval service."[5]

(4) Marine Corps. The Marine Corps "includes the Regular Marine Corps, the Fleet Marine Corps Reserve, and the Marine Corps Reserve."[6] A person, male or female, who is appointed or enlisted in or inducted or conscripted into the Marine Corps is a "member of the naval service."[7]

(5) Coast Guard. The Coast Guard is a part of the armed forces.[8] It is a military service at all times, whether employed in the Department of Transportation or operating in the Navy.[9] The Coast Guard includes the Regular Coast Guard[10] and the Coast Guard Reserve.[11]

(6) Officers of the Public Health Service. The Public Health Service is not a military service although it may be so designated by the President in time of war or national emergency.[12] The Secretary of Health, Education and Welfare may detail Public Health Service officers for duty with the Army, Air Force, Navy or Coast Guard.[13] While so detailed, in time of war, or while the Public Health Service is a military service by designation of the President, Public Health Service officers and their surviving beneficiaries are entitled:

> to all rights, privileges, immunities, and benefits now or hereafter provided under any law of the United States in the case of commissioned officers of the Army of their surviving beneficiaries on account of active military service, except retired pay and uniform allowances.[14]

Despite the language of section 101(1), which includes only those officers detailed to the Army and Navy, the benefits of the Soldiers' and Sailors' Civil Relief Act were extended to a lieutenant commander in the United States Public Health Service, assigned for duty with the Coast Guard.[15]

b. Persons not members of the military establishment. Several categories of persons related to the military have been found to be outside the ambit of "persons in the military service of the United States." For example, a merchant seaman accompanying the Army and subject to court-martial jurisdiction is not entitled to the benefits of the Act.[16] Similarly, civilian employees of the armed services,[17] contract surgeons,[18] and employees of government contractors[19] have been held to be persons not in the military service of the United States.

Although the Act primarily benefits persons in the military service, it can, however, include civilians. These include guarantors or accommodation makers,[20] those joined in law suits as co-defendants, and those who hold a dependent relationship to servicemembers.[21]

c. Active Federal service. In addition to being a member of the military establishment, a person seeking the benefits of the Act must also, pursuant to the second sentence of section 101(1), be either (1) on active duty or (2) engaged in "training or education under the supervision of the United States preliminary to induction into the military service."

The terms "Active duty"[22] and "Active service"[23] are synonymous, as evidenced by a comparison of the relevant code sections for "Active Service" and "Active Duty." In the latter case "active duty" means full-time duty in the active military service of the United States. It includes duty on the active list, full-time training in the active military service, and training at a school designated as a service school by law or by the Secretary of the military department concerned.[24]

As a result of the unambigious language, courts have held that this does not include retired personnel not on active duty,[25] or those in the reserve component while not on active duty.[26]

Members of the Army and the Air National Guard of the United States are entitled to the benefits of the Act while performing full-time duty if they are entitled to pay from the United States for their duty.[27]

d. Preliminary training. Periods of training or education preliminary to induction, if performed under the complete supervision of the United States, are treated as "full-time duty." The persons undergoing the training or education need not actually have already acquired a military status. This language appears to have been designed to cover World War II situations, such as officer candidates who were not yet members of the military establishment, but who were undergoing training and education to prepare them for military status.

e. Divestment of rights. Section 101(1) provides that "the terms 'active service' or 'active duty' shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave or other lawful cause." This raises the issue of the qualitative nature of an otherwise qualified person's military service. In the case of confinement, an Ohio court held that a soldier sentenced by a general court-martial to five years imprisonment, total forfeiture of pay and allowances, and a dishonorable discharge at the termination of the sentence was not on active duty or service and, hence, was not entitled to the benefits of the Act.[28]

In dictum, the court stated:

> I do not mean to infer that commitment for any violation of the army's rules and regulations would divest the soldier of his rights under the Soldiers' and Sailors' Relief Act, but the gravity of the offense charged and the sentence of the court-martial are factors which must be considered in determining this question.[29]

This reasoning was apparently applied in an AWOL case when a court held that a soldier, who extended his leave 16 days without permission to attend the birth of his first child, was entitled to the benefits of the Act.[30] Another court, however, concluded that a sailor forfeited his protection under the Act when he was AWOL during his divorce trial.[31] In that case, the sailor had been properly served, but subsequently went AWOL and did not appear at the proceedings.

In the case of deserters, The Judge Advocate General of the Army has expressed the advisory opinion that deserters are not "persons in the military service of the United States."[32]

f. Period of time that the Act covers. Subsection 101(2) provides that protection of the Act begins "for persons entering active service after the date of this Act, with the date of entering active service" and additionally provides "it shall terminate with the date of discharge from active service[33] or death while in active service, but in no case later than the date when this Act ceases to be in force."

Other sections of the Act, however, qualify this "period of military service." For example, sections 200 and 201 provide additional periods ranging from 30 to 90 days after the termination of all military service to assert rights protected by the Act. On the opposite end of the spectrum, section 106 back-dates the coverage of Articles I, II, and III of the Act to persons who receive orders to report for induction.

2-3. Territorial application; jurisdiction of courts; and form of procedure

Section 102

> (1) The provisions of this Act shall apply to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, and to proceedings commenced in any court therein, and shall be enforced through the usual forms of procedure obtaining in such courts or under such regulations as may be by them prescribed.
>
> (2) When under this Act any application is required to be made to a court in which no proceeding has already been commenced with respect to the matter, such application may be made to any court. (50 U.S.C. App. § 512).

a. General application. It is not clear whether Congress intended, by the language of the first clause of section 102(1), to make the Act specifically applicable to the governments of the geographical areas mentioned or merely to delineate those areas within which the Act would have operative force. The question is now, however, of small importance. The provisions of the Act have been held applicable to the governments and the territories of the geographical areas listed in the statute.

The Attorney General of the United States early advised the Secretary of Agriculture in unequivocal terms that the Soldiers' and Sailors' Civil Relief Act of 1940 is applicable to all agencies of the Federal government. In so doing, the Attorney General recognized, but did not decide between, the two possible interpretations of the statutory language. Instead, he invoked the rule of construction that a sovereign is bound by a statute when the sovereign is a chief party of interest in the statute. The Attorney General recognized this rule as an exception to the general rule of statutory construction that the sovereign is not bound by its own statutes.[34]

The courts have applied the provisions of the Act to the United States without exception,[35] as well as to State[36] and municipal governments.[37]

Additionally, State courts have applied the Act in its entirety, regardless of whether a particular provision under which relief is sought has no counterpart in state law.[38]

b. Judicial proceedings. The second clause of section 102(1) makes the Act applicable to proceedings commenced in any court within a geographical area over which the United States has jurisdiction. Section 101(4) defines the term "court" as any competent Federal or State court, whether or not it is a court of record. The third clause of section 102(1) allows courts to handle proceedings involving the Act either by use of "the usual forms of procedure" or "under such regulations as may be by them prescribed." For purposes of Federal jurisdiction, however, the Act does not present a Federal question. In Davidson v. General Finance Corporation,[39] the court held that an action against a finance company for alleged fraudulent conversion of an automobile sold at a sheriff's sale, following the company's foreclosure of a conditional sales contract, was a common-law action only incidentally involving the Act.

With the exception of section 205, the Act makes no reference to administrative proceedings. In those few cases where this issue has been raised it appears that administrative proceedings are not covered by the Act. For example, in Polis v. Creedon[40] the court held that a proceeding before an area rent director was not a proceeding before a court and that a landlord in the military service had no protection under the Act. Unquestionably, however, section 205 of the Act, which suspends the running of the statute of limitations while a member is in the military service, is applicable in administrative proceedings.[4]

2-4. Persons liable on servicemember's obligation

Section 103

> (1) Whenever pursuant to any of the provisions of this Act the enforcement of any obligation or liability, the prosecution of any suit or proceeding, the entry or enforcement of any order, writ, judgment, or decree, or the performance of any other act, may be stayed, postponed, or suspended, such stay, postponement, or suspension may, in the discretion of the court, likewise be granted to sureties, guarantors, endorsers, accommodation makers, and others, whether primarily or secondarily subject to the obligation or liability, the performance or enforcement of which is stayed, postponed or suspended.
>
> (2) When a judgment or decree is vacated or set aside in whole or in part, as provided in this Act, the same may, in the discretion of the court, likewise be set aside and vacated as to any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the contract or liability for the enforcement of which the judgment or decree was entered.
>
> (3) Whenever, by reason of the military service of a principal upon a criminal bail bond the sureties upon such bond are prevented from enforcing the attendance of their principal and performing their obligation the court shall not enforce the provisions of such bond during the military service of the principal thereon and may in accordance with principles of equity and justice either during or after such service discharge such sureties and exonerate the bail.

(4) Nothing contained in this Act shall prevent a waiver in writing of the benefits afforded by subsections (1) and (2) of this section by any surety, guarantor, endorser, accommodation maker, or other person whether primarily or secondarily liable upon the obligation or liability, except that after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 no such waiver shall be valid unless it is executed as an instrument separate from the obligation or liability in respect of which it applies, and no such waiver shall be valid after the beginning of the period of military service if executed by an individual who subsequent to the execution of such waiver becomes a person in military service, or if executed by a dependent of such individual, unless executed by such individual or dependent during the period specified in section 106. (50 U.S.C. App. § 513.)

a. Primarily and secondarily. Sections 103(1) and 103(2) provide those persons who are either primarily or secondarily liable with a servicemember on an obligation or liability with the same rights to delay actions and vacate judgments available to servicemembers. Specifically, these sections allow the court in its discretion to grant stays, postponements, or suspensions of suits or proceedings to sureties, guarantors, endorsers, accommodation makers, and others.

In considering whether to grant the stay to a co-obligor, the courts have applied a number of tests. In Modern Industrial Bank v. Zaentz[42] the court specified that co-obligors are entitled to a stay only if the servicemember is a party to the action and the action has been stayed as to the servicemember. In Tri-State Bonding Co. v. State[43] the court held that a surety could not obtain a stay unless he could show that the principal was in the military service on the date the principal was scheduled to appear, that an unsuccessful effort to secure the principal's appearance had been made, and that the principal's military service prevented his attendance on that date. Finally, a Georgia court held that where liability is joint and several and the action is brought against an accessible civilian party, the proceedings will not be stayed unless the servicemember is a party to the action.[44]

In exercising their discretion "the courts are primarily influenced by two considerations: first, whether the man in service is able to appear and defend, and second, whether a default on an obligation by reason of the change in his income will lead to an unjust forfeiture."[45] The right to open a judgment taken against a person in the military service is reserved to that person only and is not available to a judgment co-debtor.[46]

Courts differ concerning the propriety of granting stays when the defendant servicemember is protected by insurance and might be considered as only nominally a party to the suit. In Boone v. Lightner,[47] the Supreme Court recognized this problem when it stated that: a nominal defendant's absence in the military service . . . might be urged by the insurance company, the real defendant, as a grounds for deferring the trial until after the war.[48] In those cases where the issue has been litigated, the courts have taken several approaches: (1) granting the stay,[49] (2) granting the stay on condition that the insurer post a bond,[50] or (3) simply denying the stay on the grounds that an insurance company should not be permitted to use the protection of the Act as a shield to postpone or escape liability.[51] In one instance, the court agreed that it could grant stays of proceedings to sureties, guarantors, and other persons primarily or secondarily liable when proceedings have been stayed as to one in the military service. The court determined, however, that a stay is not warranted in the cases of primary or secondary obligors unless it is apparent that denial of the stay would leave the civil rights of the person in the military service unprotected.[52] More recently, an appellate court reversed a trial court that refused a stay to a servicemember when the limit of his insurance coverage was less than the amount demanded by the plaintiff.[53] Another court concluded, however, that it was an abuse of discretion to deny a request for continuance even though the plaintiff would enforce any judgment recovered only against the proceeds of the insurance policy.[54] A well-reasoned opinion in this area is Tabor v. Miller.[55] In that case, although a motion for continuance was obstensibly made on behalf of the military member, the court held that the real party in interest was the servicemember's insurance carrier. In reaching this decision the court noted that although the plaintiff's claim exceeded the servicemember's policy limits, his insurance carrier had rejected a settlement offer within those limits. The court concluded that the servicemember's absence had not materially affected the conduct of the defense, and upheld the lower court's decision to deny the requested continuance.

b. Codefendants. As previously indicated, a proceeding stayed as to a servicemember may also be stayed as to others primarily or secondarily subject to the same liability. In section 204, however, the Act also allows a court to proceed against other codefendants, notwithstanding a stay as to the servicemember.

A Washington state appellate court was presented with the problem of a servicemember driving a vehicle owned by his father. They were named as codefendants in a negligence action. The incident giving rise to the suit was witnessed only by the plaintiff and the absent servicemember-son. The trial court stayed the proceedings as to the son but denied a stay to the father, who was independently liable under the doctrine of imputed negligence. The appellate court held that the denial was within the trial court's discretion.[56]

c. Criminal bail bond sureties. The language of section 103(3) prescribes that the court "shall not enforce the provisions of a criminal bail bond during the military service of the principal" and may in accordance with the principles of equity and justice either during or after such service discharge such sureties and exonerate the bail." In United States v. Jeffries[57] the court held that because there was no doubt that the principal was in the military, it was without authority to forfeit the bail bond and issue a warrant of arrest. Subsection 103(3) was mandatory in that case. A New York court took this one step further and held the bond could not be forfeited if the principal were in the service even if he were on furlough at the time he was required to appear.[58] In Ex Parte Moore,[59] however, an Alabama court concluded that military service alone was insufficient to prevent forfeiture of the bail bond without a further showing that military service prevented the principal from attending the trial. In this regard, state courts will ordinarily require the surety not only to show that the principal is in the military, but also to demonstrate an effort to secure the principal's attendance.[60] In cases in which the principal was discharged four months before default[61] or was not inducted until almost six months after he was required to appear,[62] the surety could not avoid forfeiting the bail bond under subsection (3) of this section.

2-5. Extension of benefits to citizens serving with forces of war allies

Section 104

> Persons who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force and who immediately prior to such service were citizens of the United States shall, except in those cases provided for in section 512, be entitled to the relief and benefits afforded by this Act if such service is similar to military service as defined in this Act, unless they are dishonorably discharged therefrom, or it appears that they do not intend to resume United States citizenship. (50 U.S.C. App. § 514).

Sections 104 and 512 of the Act are basically the same in language and attempt to accomplish the same goals. Section 104 covers all the sections of the Act except those contained in sections 501 to 511 inclusive. Section 512 fills this gap and extends the benefits of these eleven sections in Article V to the same persons as stated in section 104. The only appreciable difference between sections 104 and 512 is that section 512 extends the benefits of sections 501-511 to those who die in the service of the armed forces of an allied nation or who die as a result of such service while section 104 does not.

The thrust of sections 104 and 512 is to allow those persons who serve in the armed forces of nations that are allied with the United States in the prosecution of war against a common enemy to receive the protective features of the Act to the same extent as soldiers in the armed forces of the United States.

Both sections contemplate that those who serve in allied armed forces will resume citizenship sometime after their service with these allied forces. In a set of circumstances involving section 104, a United States citizen serving in a foreign armed force allied to the United States in the prosecution of any war would get the benefits of all the sections of the Act, with the exception of sections 501 to 511, as long as he received an honorable discharge from the allied armed force. Arguably, the present statutory requirement of section 104 that the former citizen must intend to resume United States citizenship before section 104 would be operative could be avoided as a result of the Supreme Court decision in Afroyim v. Rusk.[68] Section 512 of the Act would likewise be affected.

2-6. Extension of benefits to persons ordered to report for induction or military service

Section 106

> Any person who has been ordered to report for induction under the Selective Training and Service Act of 1940, as amended, shall be entitled to the relief and benefits accorded persons in military service under articles I, II, and III of this Act during the period beginning on the date of receipt of such order and ending on the date upon which such person reports for induction; and any member of the Enlisted Reserve Corps who is ordered to report for military service shall be entitled to such relief and benefits during the period beginning on the date of receipt of such order and ending on the date upon which he reports for such service. (50 U.S.C. App. § 516.)

Congress added section 106 to the Act in 1942 with the express intent of providing draftees and enlisted reservists ordered to active duty with the benefits of the first three articles of the Act [50 U.S.C. §§ 510-36 (1946)] in the period between the time they received orders to active duty and the time when they reported for duty. The Selective Training and Service Act of 1940, as amended, and mentioned in section 106, has been replaced by similar updated provisions.

Persons ordered to active duty under the draft law report in accordance with the Military Selective Service Act.[64] An individual ordered to report for induction is within the purview of section 106 even though the induction process has not been completed.[65]

2-7. Waiver of benefits of the Act

Section 107

> Nothing contained in this Act shall prevent--
>
> (a) the modification, termination, or cancelation of any contract, lease, or bailment or any obligation secured by mortgage, trust, deed, lien, or other security in the nature of a mortgage, or
>
> (b) the repossession, retention, foreclosure, sale, forfeiture, or taking possession of property which is security for any obligation or which has been purchased or received under a contract, lease, or bailment, pursuant to a written agreement of the parties thereto including the person in military service concerned, or the person to whom section 106 is applicable, whether or not such person is a party to the obligation), or their assignees, executed during or after the period of military service of the person concerned or during the period specified in section 106. (50 U.S.C. App. § 517.)

Congress added this section of the Act in 1942. It was designed to induce servicemembers and their creditors to adjust their rights privately and to make it clear that no restrictions have been placed upon the usual right of the parties to renegotiate an obligation. This section expressly permits foreclosures.[66]

While servicemembers might waive, in writing, certain benefits of the Act, they do not thereby waive all other rights under the Act. For example, renegotiating a conditional sales contract will not waive the right, in the event of default, to regain possession as prescribed by sections 301 and 303.[67] Additionally, when litigating the legality of the seizure, the servicemember does not waive the tolling of the statute of limitations as provided by section 205 of the Act.[68]

2-8. Transfers to take advantage of the Act

Section 600

> Where in any proceeding to enforce a civil right in any court it is made to appear to the satisfaction of the court that any interest, property, or contract has since the date of the approval of this Act been transferred or acquired with intent to delay the just enforcement of such right by taking advantage of this Act, the court shall enter such judgment or make such order as might lawfully be entered or made, the provisions of this Act to the contrary notwithstanding. (50 U.S.C. App. § 580.)

This section emphasizes the equitable nature of the Act and is designed to prevent its abuse. Debtors who are ineligible to receive the benefits of the Act are deprived of the opportunity to secure these benefits through colorable transfers or assignments to persons who are or may become servicemembers.

The pivotal issue in the few decisions interpreting this section is the existence of an intent to delay or defeat the enforcement of rights. A court in Oklahoma held that reassignment of an interest in an oil and gas lease containing a nine month drilling provision to a person who had received orders to active duty, 6 weeks before reporting, was a transfer to take advantage of the Act.[69] Similarly, when a corporation transferred mortgaged real estate, upon which it had not met previous payments, to one of its owners and officers on the day he entered military service, the court denied protection under the Act.[70]

2-9. Certification of period of military service--treatment of missing persons

Section 601

(1) In any proceeding under this Act a certificate signed by The Adjutant General of the Army as to persons in the Army or in any branch of the United States service while serving pursuant to law with the Army of the United States, signed by the Chief of Naval Personnel as to persons in the United States Navy or in any branch of the United States service while serving pursuant to law with the United States Navy, and signed by the Commandant, United States Marine Corps, as to persons in the Marine Corps, or in any other branch of the United States service while serving pursuant to law with the Marine Corps, or signed by an officer designated by any of them, respectively, for the purpose, shall when produced on prima facie evidence as to any of the following facts stated in such certificate:

That a person named has not been, or is, or has been in military service; the time when and the place where such person entered military service, his residence at that time, and the rank, branch, and unit of such service that he entered, the dates within which he was in military service, the monthly pay received by such person at the date of issuing the certificate, the time when and the place where such person died in or was discharged from such service.

(2) It shall be the duty of the foregoing officers to furnish such certificate on application, and any such certificate when purporting to be signed by any one of such officers or by any person purporting upon the face of the certificates to have been so authorized shall be prima facie evidence of its contents and of the authority of the signer to issue the same.

(3) Where a person in military service has been reported missing he shall be presumed to continue in the service until accounted for, and no period

herein limited which begins or ends with the death of such person shall begin or end until the death of such person is in fact reported to or found by the Department of the Army or Navy, or any court, or board thereof, or until such death is found by a court of competent jurisdiction: Provided, That no period herein limited which begins or ends with the death of such person shall be extended hereby beyond a period of six months after the time when this Act ceases to be in force. (50 U.S.C. App. § 581.)

In a proceeding involving section 205 of the Act, a properly authenticated certificate of service in the United States Marine Corps was prima facie evidence of the fact of the service.[71] Subsection 601(3) creates the presumption that when persons in the military service are reported missing, they will be deemed to have continued in the service until they are accounted for.

Cases involving missing persons, affected by section 601(3), should be viewed in conjunction with Chapter 10 of Title 37 United States Code.[72]

2-10. Power of attorney

Section 701

(a) Extension for period person in missing status.

Notwithstanding any other provision of law, a power of attorney which--

(1) was duly executed by a person in the military service who is in a missing status (as defined in section 551(2) of Title 37);

(2) designates that person's spouse, parent, or other named relative as his attorney in fact for certain specified, or all, purposes; and

(3) expires by its terms after that person entered a missing status, and before or after the effective date of this section; shall be

automatically extended for the period that the person is in a missing status.

(b) Limitation on extension.

No power of attorney executed after the effective date of this section by a person in the military service may be extended under subsection (a) of this section if the document by its terms clearly indicates that the power granted expires on the date specified even though that person, after the date of execution of the document, enters a missing status.

(c) Persons subject to coverage.

This section applies only to persons in military service who executed powers of attorney during the Vietnam era (as defined in section 101(29) of Title 38). (50 U.S.C. App. § 591.)

2-11. Revocation of interlocutory orders

Section 602

> Any interlocutory order made by any court under the provisions of this Act may, upon the court's own motion or otherwise, be revoked, modified, or extended by it upon such notice to the parties affected as it may require. (50 U.S.C. App. § 582.)

The wording of this section is straightforward and unambiguous. It permits a court that has issued an interlocutory order under any of the sections of the Act to revoke, modify, or extend such an order on its own motion or otherwise. This section has relevance when read together with other sections that allow a court to grant certain relief and then allow the court to make "such other orders as may be just." For example, section 300, which deals with eviction and distress, allows a court to grant a three-month stay of eviction proceedings or to "make such other orders as may be just." Thus, the court could issue whatever interlocutory orders its rules of procedure allowed in such a proceeding if it found that such an order would be "just" to all the parties involved. The language in section 300 appears to authorize the kind of interlocutory order contemplated by Congress in section 602 of the Act. Sections 200, 301, 302, and 305 are other sections of the Act that contain language that allows a court to issue interlocutory orders. Those orders also can be "revoked, modified, or extended" by section 602.

2-12. Separability of provisions

Section 603

> If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances shall not be affected thereby. (50 U.S.C. App. § 583.)

2-13. Termination date

Section 604

> This Act shall remain in force until May 15, 1945: Provided, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter: Provided further, That wherever under any section or provision of this Act a proceeding, remedy, privilege, stay, limitation, accounting, or other transaction has been authorized or provided with respect to military service performed prior to the date herein fixed for the termination of this Act, such section or provision shall be deemed to continue in full force and effect so long as may be necessary to the exercise or enjoyment of such proceeding, remedy, privilege, stay, limitation, accounting, or other transaction. (50 U.S.C. App. § 584.)

The Soldiers' and Sailors' Civil Relief Act was to end on the later of the following two dates: 15 May 1945 or six months after a treaty of peace ending World War II was proclaimed by the President of the United States. In 1948, as an added provision of the Universal Military Training and Service Act, Congress stated that the Soldiers' and Sailors' Civil Relief Act was to continue in force until it was "repealed or otherwise terminated by a subsequent Act of Congress. . . ."[73]

Congress has not repealed or terminated the Soldiers' and Sailors' Civil Relief Act of 1940 and, therefore, the Act continues in effect.

2-14. Inapplicability of Soldiers' and Sailors' Civil Relief Act of 1918

Section 605

> The provisions of section 4 of the joint resolution approved August 27, 1940 (Public Resolution Numbered 96, Seventy-sixth Congress), and the provisions of section 13 of the Selective Training and Service Act of 1940, shall not be applicable with respect to any military service performed after the date of enactment of this Act. (50 U.S.C. App. § 585.)

In the summer of 1940, the Seventy-Sixth Congress enacted legislation to extend certain benefits of the Soldiers' and Sailors' Civil Relief Act of 1918 to those who were then entering military service. In October of that same year, the Congress passed the presently existing Soldiers' and Sailors' Civil Relief Act of 1940. Section 605 makes it clear that the 1940 Act superseded in all respects those sections of the 1918 Act that were extended by the two legislative enactments of the Seventy-Sixth Congress earlier in 1940.

FOOTNOTES

1. See S. Rep. No. 2109, 76th Cong., 3d Sess. 1-2 (1940).

2. 10 U.S.C. § 3062(c) (1988).

3. Id. § 8062(d).

4. Id. § 5001(a)(1).

5. Id. § 5001(a)(3).

6. Id. § 5001(a)(2).

7. Id. § 5001(a)(3).

8. Id. § 101(4).

9. 14 U.S.C. § 1 (1988). (Responsibility for administration of the Coast Guard was transferred from the Department of Treasury to the Department of Transportation by Pub. L. No. 89-670, Oct. 15, 1966, 80 Stat. 937, 49 U.S.C. § 1655(b), except in time of war or when the President directs as provided in section 3 of this title.

10. 14 U.S.C. §§ 211-13, 351 (1988).

11. 14 U.S.C. §§ 751a, 762 (1988).

12. 42 U.S.C. § 217 (1982 & Supp. V 1987).

13. 42 U.S.C. § 215(a) (1982) (all functions of the Public Health Service of the Surgeon General of the Public Health Service, all officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service are transferred to the Secretary of Health, Education and Welfare by the 1966 Reorganization Plan No. 3, 31 Fed. Reg. 8855, 80 Stat. 1610, effective June 25, 1966. 42 U.S.C. § 202 (1982)).

14. 42 U.S.C. § 213(a) (1982 & Supp. V 1987).

15. Wanner v. Glen Ellen Corp., 373 F. Supp. 983 (D.C. Vt. 1974) (tolling provisions of Act suspended running of state's one-year statute of limitations for skiing accident suffered by lieutenant commander in Public Health Service).

16. Osborn v. United States, 164 F.2d 767 (2d Cir. 1947). *But see* Rosenbloom v. New York Life Ins. Co., 163 F.2d 1 (8th Cir. 1947).

17. Peace v. Bullock, 254 Ala. 361, 48 So. 2d 423 (1950).

18. Hart v. United States, 125 Ct. Cl. 294 (1953).

19. Hart v. United States, 95 F. Supp. 679 (D.N.J. 1951).

20. SSCRA § 103.

21. SSCRA § 306. *See also* Carr v. United States, 422 F.2d 1007 (4th Cir. 1970) (statute of limitations tolled only if action is against person in military service or his heirs, executors, administrators, or assigns). *Cf.* Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Card v. American Brands Corp., 401 F. Supp. 1186 (S.D.N.Y. 1975); Spanpinato v. City of New York, 311 F.2d 439 (2nd Cir. 1962), *cert. denied* 372 U.S. 980, 83 S.Ct. 1115, 10 L.Ed.2d 144, *reh'g denied* 374 U.S. 818, 83 S.Ct. 1699, 10 L.Ed 2d 1042.

22. 10 U.S.C. § 101(22) (1988).

23. *Id.* § 101(24).

24. *Id.* § 101(22).

25. Jax Navy Federal Credit Union v. Fahrenbruch, 429 So.2d 1330 (Fla. Dist. Ct. App. 1983); Lang v. Lang, 176 Misc. 213, 25 N.Y.S.2d 775 (Sup. Ct. 1941).

26. Betha v. Martin, 188 F. Supp. 133 (E.D. Pa. 1960).

27. 10 U.S.C. §§ 3686, 8686 (1988).

28. Mantz v. Mantz, 69 N.E.2d 637 (Ohio C.P. 1946).

29. *Id*. at 639.

30. Shayne v. Burke, 158 Fla. 61, 37 So. 2d 751 (1946).

31. Harriott v. Harriott, 211 N.J. Super. Ch. Div. 445, 511 A.2d 1264 (1986); *see* Driver v. Driver, 35 Conn. 229, 416 A.2d 705 (Super. Ct. 1980).

32. *E.g.*, JAGA 1952/3654 (22 April 1952).

33. Diamond v. United States, 344 F.2d 703, 170 Ct. Cl. 166 (1965) (release from active duty terminates period of military service, and section of Act which halted operation of statute of limitations during period of military service was not applicable after release from active duty).

34. 40 Ops Att'y Gen 87 (1941).

35. *E.g.*, Edmoñston v. United States, 140 Ct. Cl. 199, 155 F. Supp. 553 (1957) (Tucker Act); Berry v. United States, 130 Ct. Cl. 33, 126 F. Supp. 190 (1954), *cert. denied*, 349 U.S. 938 (1955) (Tucker Act); *cf*. Abbattista v. United States, 95 F. Supp. 679 (D.N.J. 1951) (Suits in Admiralty Act).

36. Parker v. State, 185 Misc. 584, 57 N.Y.S.2d 242 (Ct. Cl. 1945).

37. Calderon v. City of New York, 184 Misc. 1057, 55 N.Y.S.2d 674 (Sup. Ct. 1945).

38. New York Life Ins. Co. v. Litke, 181 Misc. 32, 45 N.Y.S.2d 576 (1943). *See also* State v. Goldberg, 161 Kan. 174, 166 P.2d 664 (1946).

39. Davidson v. General Finance Corporation, 295 F. Supp. 878 (D.C. Ga. 1968).

40. Polis v. Creedon, 162 F.2d 908 (Em. App. 1947) *accord*, Hanebuth v. Scott, 111 Colo. 443, 142 P.2d 1008 (1943), *modified*, 115 Colo. 176, 170 P.2d 530 (1946); Hanebuth v. Patton, 111 Colo. 447, 142 P.2d 1010 (1943), *modified*, 115 Colo. 166, 170 P.2d 526 (1946). (These companion cases dealt with administrative, departmental police hearings). *But see* Kentucky Unemployment

Compensation Comm'n v. Chenault & Orear, 295 Ky. 562, 174 S.W.2d 767 (1943) (dictum). *See also* United States v. Frantz, 220 F.2d 123, (3d Cir.), *cert. denied*, 349 U.S. 954, 75 S. Ct. 883, 99 L. Ed. 1278 (1955).

41. Shell Oil Co. v. Industrial Comm'n, 407 Ill. 186, 94 N.E.2d 888 (1950) (filing of workmen's compensation claim).

42. Modern Industrial Bank v. Zaentz, 177 Misc. 132, 29 N.Y.S.2d 969 (N.Y. City Munic. Ct. (1941).

43. Tri-State Bonding Co. v. State, 567 S.W.2d 937 (Ark. 1978).

44. Hartsfield Co. v. Whitfield, 71 Ga. App. 257, 30 S.E.2d 648 (1944). *But see* Akron Auto Finance Co. v. Stonebraker, 66 Ohio App. 507, 35 N.E.2d 585 (1941).

45. *Note*, 9 U. Chi. L. Rev. 348, 349 (1942).

46. J. C. Penny v. Oberpidler, 163 S.W.2d 1067 (Tex. Civ. App. 1942), *rev'd on another ground*, 141 Tex. 128, 170 S.W.2d 607 (1943).

47. Boone v. Lightner, 319 U.S. 561, 569, *reh'g denied*, 320 U.S. 809 (1943) (emphasis added).

48. *Id*.

49. Craven v. Vought, 43 Pa. D&C 482, 4 Mon. Leg. R. 11, 55 York Leg. Rep. 173 (1941).

50. Royster v. Lederle, 128 F.2d 197 (6th Cir. 1942). *Cf*. Childers v. Nicolopoulos, 296 F. Supp. 547 (D.C. Okla. 1969) (defendant not required to post bond although stay had previously been granted). *See also* Swiderski v. Moodenbaugh, 45 F. Supp. 790 (D. Ore. 1942).

51. Laperouse v. Eagle Indem. Co., 202 La. 686, 12 So. 2d 680 (1942).

52. Register v. Bourguin, 203 La. 825, 14 So. 2d 673 (1943).

53. Cox v. Yates, 96 Ga. App. 466, 100 S.E.2d 649 (1957).

54. Rutherford v. Bentz, 345 Ill. App. 532, 104 N.E.2d 343 (1952).

55. Tabor v. Miller, 369 F. Supp. 647, (D. Pa.) aff'd, 389 F.2d 645 (3d Cir.), cert. denied, Stearns v. Tabor, 391 U.S. 915, 88 Sup. Ct. 1810, 20 L. Ed. 2d 654 (1968) (defendant did not state that it would be impossible for him to appear at trial, and did not suggest that trial be held during his Christmas leave).

56. State ex rel. Frank v. Bunge, 16 Wash. 2d 358, 133 P.2d 515 (1943).

57. United States v. Jeffries, 140 F.2d 745 (7th Cir. 1944).

58. People v. Correa, 181 Misc. 1019, 43 N.Y.S.2d 266 (1943).

59. Ex Parte Moore, 244 Ala. 28, 12 So. 2d 77 (1943).

60. E.g., State v. Benedict, 234 Iowa 1178, 15 N.W.2d 248 (1944); People v. Continental Gas Co., 284 App. Div. 944, 134 N.Y.S.2d 742 (1954), rev'd 205 Misc. 5, 126 N.Y.S.2d 127 (Sup. Ct. 1953); Cumbie v. State, 367 S.W.2d 693 (Tex. Civ. App. 1963).

61. United States v. Carolina Gas Ins. Co., Ill., 237 F.2d 451 (7th Cir. 1956).

62. State v. Benedict, 234 Iowa 1178, 15 N.W.2d 248.

63. Afroyim v. Rusk, 387 U.S. 253 (1967) (Congress has no power under the Constitution to divest a person of his United States citizenship absent his voluntary renunciation thereof).

64. 50 U.S.C. App. §§ 451, 453, 454, 455, 456, 458-471a (1982 & Supp. V 1987).

65. E.g., Clements v. McLeod, 155 Fla. 860, 22 So. 2d 220 (1945); J.C.H. Service Station v. Patrikes, 181 Misc.

401, 46 N.Y.S.2d 288 (1944); Ostrowski v. Barczynski, 211, 24 Erie County L.J., 45 Pa. D&C 451 (C.P. 1942).

66. Brown v. Gerber, 495 P.2d 1160 (Colo. 1972) (permitting foreclosure of trust deed on encumbered property acquired after purchaser had commenced his period of military service).

67. S & C Motors v. Carden, 223 Ark. 164, 264 S.W.2d 627 (1954).

68. Harris v. Stem, 30 So. 2d 889 (La. App. 1947).

69. Lima Oil & Gas Co. v. Pritchard, 92 Okla. 113, 218 Pac. 863 (1923) (1918 Act).

70. Ninth Fed. Sav. & Loan Ass'n v. Parkway West Corp., 182 Misc. 919, 48 N.Y.S.2d 762 (Sup. Ct. 1943), cf. Sullivan v. State Bar, 28 Cal. 2d 488, 170 P.2d 888 (1946).

71. Betha v. Martin, 188 F. Supp. 133, 134 (E.D. Pa. 1960); Van Doeran v. Pelt, 184 S.W.2d 744 (Mo. App. 1945).

72. Act of September 6, 1966, Pub. L. No. 89-554, 80 Stat. 625.

73. 50 U.S.C. App. § 464 (1982).

Chapter 3

General Relief: Default Judgments, Affidavits, Bonds, Attorneys for Persons in Service

3-1. Purpose and Scope.

This chapter examines the general relief provisions of the Act applicable when a default judgment is taken or sought against a servicemember whose ability to participate in the judicial proceeding is materially affected by military service.

3-2. Procedure Upon Default by Defendant.

Section 200(1)

> In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service, the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of

> the defendant under this Act. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subsection that facts be established by affidavit. (50 U.S.C. App. § 520.)

a. Affidavit. Section 200(1) of the Act provides that before judgment in any action in any court, if there is a default of any appearance by the defendant, the plaintiff must file an affidavit stating facts showing whether the defendant is in military service.

(1) When required. The Act is clear that this subsection applies to any civil action or proceeding in any court. There has been little controversy on this point, although one Ohio decision ruled that presentation of a will for probate was not an adversary proceeding and interested parties need not appear before the court. Therefore, the court did not require an affidavit by the plaintiff (petitioner) when the minor son of the deceased was in military service.[1] The court held that the Soldiers' and Sailors' Civil Relief Act applies when servicemembers are sued as defendants but does not apply to "in rem" proceedings that are not against named defendants.[2] Nevertheless, the great majority of decisions have included probate cases within the scope of this subsection.[3]

The plaintiff must file an affidavit where there is a default of any appearance by the defendant. The courts have agreed that "any appearance" means any appearance whatsoever.[4] Defendants have argued that they could appear especially for the purpose of testing the court's jurisdiction without losing the benefits of this section. In one response to this argument, the court stated: "[t]he benefits of [50 U.S.C. App.] section 520 are made to depend on an absence of any appearance, which includes a special as well as a general appearance. So, whether the appearance made was special or general is not material to the question.[5] In dealing with the question of the meaning of "any appearance," another court held:

> Consideration of the meaning of the phrase "any appearance" is sometimes required. The 1918 Act used the words "an appearance" but in the 1940 Act the phrase was broadened to read "any appearance". The word "appearance" is defined in Webster's New Int. Dict. 2d Ed., 1940, as meaning in law, "the coming into court of a party summoned in an action either by himself or by his attorney." Technically there are several different kinds and methods of appearance. See Am Jur, appearances, section 1, etc. A default of any appearance by the defendant means a default in any one of several ways of making an appearance. "Any" applies to every individual part without distinction.[6]

It appears that any act before the court by a defendant-servicemember, or the defendant's attorney, will constitute an appearance depriving the servicemember of the benefits of section 200. In Blankenship v. Blankenship,[7] defendant's counsel filed an affidavit asking the court to quash the complaint and the service or continue the cause. In Reynolds v. Reynolds[8] the defendant's counsel filed a motion to dismiss for lack of jurisdiction. In Vara v. Vara[9] the defendant filed a motion to quash service. In each of these cases, the court held that the servicemember made an appearance.

Upon receiving service of process in an overseas area, a servicemember sometimes writes a letter to the court or sends a telegram asking for protection under the Act. Such an informal communication should not be classified as an "appearance" by the courts.[10] The same is true of a legal-appearing document prepared by a military legal assistance officer and mailed to the court.[11] In practice, however, at least one court has held that a letter from a legal assistance attorney invoking the Act and requesting a stay constituted an appearance.[12] This appearance waived the servicemember's protection against a default judgment.

The requirement for the court to appoint an attorney to represent a defaulting defendant-servicemember is discussed later in this chapter. Nothing a court appointed attorney does personally can amount to an appearance on behalf of a servicemember, as far as the provisions of section 200 are concerned.[13] This is true for two reasons. First, although counsel is appointed when there is a default of appearance, the appointment does not change that fact; and second, the appointed counsel cannot waive any of the defendant's rights and one of these is the right to apply to reopen a judgment entered in default of appearance.[14]

(2) Content. Subsection 200(1) states that the plaintiff's affidavit shall set forth facts showing that the defendant is not in military service. This should require more than a statement that the defendant is not in the service. Some facts are required before the court will enter a default judgment.[15] If the defendant is in service, the plaintiff should so state in the affidavit. If the plaintiff cannot determine whether defendant is in the service, the plaintiff must so state in the affidavit.

The last provision of subsection 200(1) permits an unsworn statement, declaration, verification, or certificate in writing to take the place of an affidavit as long as it is subscribed and certified or declared to be true under penalty of perjury and is permitted by the rules of court. An Idaho court held that a verified complaint containing statements as to the defendant's military status complied with the statutory requirement for an affidavit. The court stated that the essential element was that the allegation was made under oath.[16] In United States v. Kaufman,[17] the court held that documents presented in support of default judgments were an "affidavit" for purposes of prosecution under section 520(2) of the Act, even though the defendant did not actually swear to the written statements.

(3) Persons protected. Occasionally, a civilian defendant determines that the plaintiff failed to file an affidavit as to the defendant's military status and alleges that his rights have been violated and the default judgment should be vacated. In this situation, a Michigan court pointed out that plaintiff's failure to file an affidavit of nonmilitary service before taking default judgment did not prejudice defendants who were admittedly not in military service at the time the

default was entered.[18] The courts have agreed that the affidavit requirement protects only the military defendant who cannot appear in defense.[19]

(4) Effect of not filing affidavit. Subsection 200(1) of the Act spells out several consequences of a plaintiff's failure to file an affidavit of nonmilitary service. If such an affidavit is not filed, a court will not enter default judgment until the plaintiff meets the Act's requirements.[20] Another consequence of failure to file an affidavit is that a subsequent default judgment is voidable and can be reopened at a later date on application by the defendant under certain conditions. Until that occurs, however, the judgment is valid and binding and entitled to recognition under the principles of full faith and credit.[21] In the Ohio case of Thompson v. Lowman,[22] the court said,

> It will be observed that the filing of the military affidavit is not made a jurisdictional matter. The Act authorizes entry of judgment notwithstanding the absence of the affidavit when an order of court directing such entry has been secured. The failure to file such affidavit does not affect the judgment, and is only an irregularity. . . . When the judgment is rendered without filing the requisite affidavit, the courts have uniformly ruled that the judgment is not void, but only voidable, subject to being vacated at the instance of the servicemember, but only upon proper showing that he has been prejudiced by reason of his military service in making defense.[23]

b. Court appointed attorney. Section 200(1) of the Act requires that if the plaintiff does not file an affidavit showing that the defendant is not in military service, the court shall appoint an attorney to represent the defendant and to protect defendant's interests before entering a default judgment. The 1960 amendments to the Act changed this wording from "may appoint" to "shall appoint," making this a mandatory requirement.[24] The sentence in subsection 200(1), which requires the court to appoint an attorney, also contains the phrase, "if the defendant is in such service." When the plaintiff files an affidavit stating that defendant is in service, or stating that plaintiff is unable to determine if defendant is in service, the court must make findings as to whether defendant is in military service. Then, if the defendant is in service, the court must appoint an attorney.

None of these provisions apply unless the defendant has defaulted of any appearance whatsoever. Therefore, if the defendant has appointed an attorney to represent him in the case, this section will not apply. For example, the California Supreme Court held that the provisions of this section were designed to protect defendants in military service who do not appear by ensuring appointment of attorneys to represent them. The section did not protect a defendant who had appointed his own attorneys to protect his interests.[27] An interesting situation can arise when a servicemember retains an attorney from previous, related litigation. In such a situation, the California court ruled that, where notice of a wife's motion to modify a support order was served upon an absent husband's attorney in the original divorce action, but the attorney stated he was no longer authorized to represent defendant and had not been able to communicate with the husband, it was error to fail to appoint an attorney.[28] Further information in this area appears in paragraph 3.4 of this chapter.

c. Bond requirement. In addition to requiring the plaintiff to file the appropriate affidavit and the court to appoint an attorney, subsection 200(1) provides that before entering judgment the court may require plaintiff to file a bond. When it appears that the defendant is in military service the court may require, as a condition to the entry of a default judgment, that the plaintiff file a bond. The face amount of the bond may be used to indemnify the defendant against any loss or damage suffered if the judgment is later set aside. The court is also permitted to make any further order or enter such judgment as in its opinion may be necessary to protect the defendant's rights.

3-3. Penalty for False Affidavit.

Section 200(2)

> Any person who shall make or use an affidavit required under this section, or a statement,

> declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subsection (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (50 U.S.C. App. § 520.)

Subsection 200(2) provides a criminal sanction for making or using a false affidavit under section 200(1). Any person who makes or uses an affidavit or an authorized [by section 200(1)] substitute therefor, knowing it to be false, is guilty of a misdemeanor. The punishment provided is imprisonment not to exceed one year or a fine not to exceed $1,000, or both.[27]

3-4. Court Appointed Attorney.

Section 200(3)

> In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts. (50 U.S.C. App. § 520.)

a. General. Subsection 200(3) provides for court appointment of an attorney to represent a servicemember who is a party to the action and who has not personally appeared therein or been represented by an authorized attorney. This subsection differs from the subsection 200(1) requirement in that this section says the court "may appoint" instead of "shall appoint." This is true because this subsection, 200(3), is not referring to a condition which must exist before a default judgment is entered, but is stating that the court may appoint an attorney at any time during the proceedings. Consequently, several questions have arisen concerning court appointed counsel.

b. Responsibilities of appointed attorney. When a plaintiff files an affidavit stating that the defendant is in military service or that the plaintiff cannot determine whether he is in military service and an attorney is appointed to represent this missing defendant, what does the attorney do? The attorney is charged by statute with representing the servicemember and protecting his interest. One author has noted that an "appointed attorney is under an obligation to exhaust every reasonable means of establishing contact with the servicemember prior to trial date so that some logical course of action can be agreed upon."[28] Another writer has indicated that "local court rules . . . sometime provide that the appointed attorney shall inquire into defendant's military status and whether his ability to meet his debts has been materially affected and then report to the court."[29] A New York court, in appointing such counsel, said it was for the purpose of obtaining facts as to whether the soldier's ability to comply with the terms of the obligation had been materially affected by his military service and to report to the court thereon or move for a stay in the soldier's behalf.[30] In another case, the court stated that the purpose of the appointed counsel, either required or suggested, is to obtain a stay for the defendant.[31] Of course, if the military defendant is geographically and militarily able, he may desire to cooperate fully in the defense. This would, then, constitute an appearance and would deprive him of the opportunity to apply to reopen the judgment under subsection 200(4). Unless the defendant is able to be present for trial and to testify and fully cooperate in the defense, the primary purpose of the appointed attorney should be to obtain a stay until the defendant can be present. The attorney can make this motion without depriving the defendant of the right to apply to reopen any default judgment that might result.

c. Compensation of appointed attorney. When a military defendant has defaulted and the court has appointed an attorney to represent him and protect his interest, the court must also address the amount of the attorney's fee and the source of payment. A New Jersey court opined that:

> Ordinarily the services rendered by proctor and counsel so appointed are to be regarded as a

> patriotic duty for which no compensation would be expected by members of a profession deeply imbued by a sense of public responsibility. Certainly not as against a party in military service. However, in cases in which allowances are commonly made according to the usual probate practice, there seems no good reason why reasonable compensation should not be awarded.[32]

Similarly, the Wisconsin Supreme Court held that the appointed attorney should be paid compensation allowed those in public service and fees ordinarily chargeable between attorney and client.[33]

d. Acts not binding on defendant. Subsection 200(3) of the Act also provides that no attorney appointed by the court to represent defendant-servicemembers has power to waive any of the servicemembers' rights or to bind them by his acts. Paragraph 3-2a(1) of this chapter noted that nothing the guardian ad litem does personally can amount to an appearance on behalf of the servicemember insofar as the provisions of section 200 are concerned. In the Illinois case of Rutherford v. Bentz,[34] the court stated that the acts of the guardian ad litem appointed to represent a defendant who was overseas in military service could not bind the defendant with respect to his right to a continuance.

Of course, once servicemembers begin authorizing acts by their appointed attorneys, they will ordinarily be bound thereby. The Supreme Court of Washington has said:

> It appears from the language of the Act that the protection afforded a servicemember from any waiver of his rights by legal counsel was intended to apply only where attorney acted under authority of the court, rather than authority of the servicemember. In each case a question of fact exists; i.e., whether servicemember has, himself, authorized the attorney to act for him. That the attorney was originally appointed under the act is no wise determinative of this question.[35]

If defendants realize that they are unable to be present for trial and their chances of success are greatly decreased by their absence, they may wish to preserve their right to reopen default judgments under 200(4). In that case, they should not authorize any action by their court-appointed attorneys because the court may construe the action to be an appearance in the proceedings.

3-5. Reopening Default Judgments.

Section 200(4)

> If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment. (50 U.S.C. App. § 520.)

a. Requirements to apply for reopening. Subsection 200(4) of the Act provides a method whereby a defendant-servicemember may have a default judgment reopened. In attempting to have the judgment reopened, the defendant must apply to the same court that rendered the judgment.[38] Three conditions must exist before a servicemember can apply to have the court reopen a default judgment reopened.

(1) Judgment during service or within 30 days thereafter. Subsection 200(4) refers only to default judgments rendered against the servicemember during his period of service or within thirty days thereafter. This excludes any judgments rendered before the defendant entered military service or more than thirty days after separation from service.

(2) Application during service or within 90 days thereafter. The defendant or a legal representative must file an application to reopen not later than 90 days after termination of military service. Defendants discovering default judgments against them more than 90 days after termination of their military service are too late.[37]

(3) Must have made no appearance. This subsection, 200(4), refers to default judgments in any action or proceeding governed by section 200. The only judgment governed by section 200 is one in which there is a default of "any appearance" by the defendant. Therefore, to apply to reopen judgments, defendant-servicemembers must not have made any appearance in an action.[38] To preserve their right to apply for a reopening, they should notify plaintiff's attorney of their military service so that the proper affidavit is filed, then allow the court appointed attorney to move for a stay. It would be unnecessary to do more. Additionally, the Supreme Court of Wisconsin has held that the provision of the Soldiers' and Sailors' Civil Relief Act authorizing application within 90 days of termination of service to reopen a judgment is equally available to the soldier represented by a court appointed attorney and to the soldier without court appointed representation.[39]

b. Criteria for reopening judgment. Servicemembers must demonstrate that their military service prejudiced their ability to defend their cases and that they have meritorious defenses before they may reopen default judgments under section 200(4).[40] Trial courts have a wide measure of discretion in deciding whether to reopen default judgments.[41]

(1) Prejudiced by military service. Defendants must show that at the time of judgment they were prejudiced in their ability to defend the suit because of their service. The courts have ruled that a voidable default judgment is subject to being vacated at the instance of a servicemember, but only upon proper showing that the servicemember's defense has been prejudiced by reason of military service.[42] In Becknell v. D'Angelo,[43] the court vacated an amended divorce decree of a

servicemember who had left the continental United States before a hearing on his wife's motion to amend, even though he had appeared at the hearing on the initial decree. His military service prejudiced his ability to defend in the action. In Federal Home Loan Mortgage Corp. v. Taylor,[44] the court held that the trial court was within its discretion in determining that acceleration of the entire mortgage debt due to default on one month's installment was unconscionable. Misunderstanding and lack of communications were attributable to the mortgagor husband's military service in the Philippines.[45]

A New York court, however, refused to set aside a default separation decree against a servicemember when he was fully advised of pendency of the action, was always accessible to the court, and refused to accept notice by certified mail of the time and place of the trial. The court held that he was not prejudiced by reason of military service in defending the action.[46] A California court ruled that if a servicemember against whom a default judgment was entered had no desire to assert a defense and had so demonstrated by his prior conduct, his military service did not prejudice him.[47] It may, of course, be quite difficult for defendants to show that their military service prejudiced their ability to defend when they have been in close contact with a court appointed attorney and have cooperated fully in the conduct of the defense.

(2) Meritorious or legal defense. In addition to showing they were prejudiced in their ability to defend, servicemembers must show that they have a meritorious or legal defense to the original cause of action before a court will reopen a default judgment. For example, one court did not abuse its discretion when it set aside a default judgment when the defendant alleged a meritorious defense.[48] Similarly, in the case of Flagg v. Sun Investment & Loan Corp.,[49] the petitioner was prevented from defending an action on a note as well as the foreclosure of his mortgage because of his military service. Petitioner's funds were on deposit with the military and were not available to him until his permanent change of station or discharge. He was therefore unable to pay the creditor the amount due. This situation was sufficient to constitute prejudice by

reason of military service. The petitioner was entitled to have the foreclosure sale and confirmation reopened so he could defend the case. In contrast, when a wife obtained a decree in equity declaring a divorce obtained by husband after entry into armed forces void because of fraud, the husband could not reopen the case. His petition did not show a meritorious or legal defense to the original suit.[50]

The requirement that petitioners have a meritorious defense is a useful provision. It avoids a waste of effort and resources in reopening judgments in cases in which servicemembers have no defense.

When a default judgment is based on an affidavit that falsely states that defendant is not in military service, the servicemember has the right to have the judgment set aside without establishing a meritorious defense.[51] To ultimately succeed on the merits, however, the servicemember must still have a meritorious defense.

c. Rights of a bona fide purchaser. When a default judgment is vacated, set aside or reversed under this section, title to property held by a bona fide purchaser could theoretically be in jeopardy. Subsection 200(4) protects the bona fide purchaser, however, by stating that vacating, setting aside, or reversing any judgment under the Act shall not impair any right or title acquired by any bona fide purchaser for value under the judgment.

3-6. Stay of Proceedings Where Military Service Affects Conduct Thereof.

Section 201

> At any stage thereof any action or proceeding in any court in which a person in military service is involved, either as plaintiff or defendant, during the period of such service or within sixty days thereafter may, in the discretion of the court in which it is pending, on its own motion, and shall, on application to it by such person or some person on his behalf, be stayed as provided in this Act unless, in the opinion of the court, the ability of plaintiff to prosecute the action or

> the defendant to conduct his defense is not materially affected by reason of his military service. (50 U.S.C. App. § 521.)

a. The nature of section 201 "stay." A "stay" under section 201 differs from those granted under section 301, 302, and 700. It is distinguishable on two principal grounds. First, the latter three stay provisions involve pre-service obligations while section 201 applies to both pre-service and in-service obligations.

Second, in applying sections 301, 302, and 700 "the court makes substantive determinations about the nature of the obligation (i.e., whether it falls within one of these sections) and the servicemember's ability to meet the obligation (i.e., the presence or absence of material effect). If the court finds that the servicemember's ability to comply with the terms of his obligation is materially affected by military service, the court may order a stay."[52] On the other hand,

> In deciding whether to grant a stay under [section 201], a court does not look to the nature of the obligation at all. What the court does examine is whether the ability of the servicemember to participate in a judicial action has been materially affected by military service.[53]

(1) Who may apply. A proper person to seek a stay is a person in the military service, as defined in section 101 of the Act and, more specifically, one who is involved in the proceedings as either a plaintiff or defendant.[54]

Arguably, when a servicemember is involved in a proceeding, but is neither the plaintiff nor the defendant, the servicemember is not entitled to a "stay" under this section. The statutory language has not, however, been interpreted by the courts in such a restricted manner. Rather, at least one court has held that "one who is a proper, as distinguished from an indispensable, party to a proceeding, and whose rights or interests may be affected by its determination is entitled to the benefit of the Act."[55]

If the servicemember is neither the plaintiff nor the defendant, does this mean that his associates, persons not in the military, can seek the protection of the Act? The answer to the question depends to a large part on the legal relationship of the servicemember not only to the issue in controversy, but also to the parties involved. One court has held that co-makers of a note are entitled to a stay based on the military service of one of the co-makers.[56] Other courts have reached the opposite conclusion, however, in the following situations: when defendant's counsel was unavailable because of military service;[57] when witnesses were unavailable because of military service;[58] and in the case of an auto accident, when the plaintiff was imputed with the negligence of a learner permittee who was presently unavailable because of military service.[59]

(2) When and where application may be made. The statute specifies that in "any action or proceeding . . . during the period of service or within sixty days thereafter," the servicemember may seek a stay. Compliance with applicable court rules prescribing time of filing and requisites for a motion for continuance is not necessary in the application for relief.

Section 201 applies to courts not of record as well as courts of record, but is inapplicable in administrative or departmental hearings or proceedings.

b. Court powers to stay. A court must act on a stay either when a defendant applies to the court or when the proceedings themselves put the court on notice that a servicemember's rights are affected. Once the court has notice, regardless of how notice was given, it must determine whether "the ability of plaintiff to prosecute the action or the defendant to conduct his defense is not materially affected by reason of his military service." The test is therefore one of material effect.

(1) Granting the stay. Courts have expressed a wide variety of opinions on what they will consider in determining whether to grant a stay. As a matter of policy, it is immaterial that a delay or inconvenience may result from a stay. A stay is a proper imposition upon an individual citizen on behalf of those discharging their obligations to the common defense.[60] On the other

hand, the section cannot be used by a party to shield wrongdoing or lack of diligence,[61] or be used as an instrument by which one in the military service may endanger the peace, health, and lives of people by staying proceedings intended to protect the general public.[62]

In Boone v. Lightner,[63] the Supreme Court addressed the issue of whether the Act mandates grant of a stay in all cases. The Court held that a trial court must grant a stay only when material effect is present. A more recent state court opinion, however, seems to place this burden on the nonmilitary party in all instances. The court held that a person in the military service is entitled as a matter of law to a stay of any proceeding by or against him, upon a showing that he is in the military service, unless further relevant evidence demonstrates that his ability to prosecute or defend is not materially impaired by his military service.[64]

In some cases, the servicemember may not apply for a stay, but the court becomes aware of the fact that one of the parties is in the military service. The statute authorizes the trial court to grant a stay sua sponte in these cases. The court must use the same decision-making process it uses in evaluating requested stays; the court must determine whether the servicemember's military service materially affected the ability to appear. If the court determines that material effect does exist, it should grant the stay. Failure to grant a stay sua sponte in such circumstances would violate the intent of the Act, as expressed in section 100, and the equitable philosophy behind it. Such a failure would probably be reversed on appeal as an abuse of judicial discretion.[65] It could also serve as a sound equitable basis for attacking a default judgment under section 200(4).

In exercising their discretion, a number of courts have established guidelines to assist them. First, since this section of the Act is discretionary, it is not an absolute bar to proceedings against someone in the military service. Therefore, servicemembers are not entitled to stays of proceedings in all instances.[66] In deciding whether to grant a stay, a court must consider all the facts and circumstances in each case.[67] Second, the power to stay under all the facts and circumstances does not imply a power to stay in anticipation that at some future time, as the litigation progresses, the ability of the servicemember to prosecute or defend will be materially affected by reason of military service.[68] Last, an appellate court will reverse a trial court only when it has abused its exercise of discretion.[69]

(2) Who has the burden of proof to show "material effect." In discussing the question of burden of proof, the Supreme Court concluded that:

> The Act makes no express provision as to who must carry the burden of showing that a party will or will not be prejudiced, in pursuance no doubt of its policy of making the law flexible to meet the great variety of situations no legislator and no court is wise enough to foresee. We, too, refrain from declaring any rigid doctrine of burden of proof in this matter, believing that courts called upon to use discretion will usually have enough sense to know from what direction their information should be expected to come.[70]

In response to this language, the trial courts have varied from case to case and jurisdiction to jurisdiction in allocating the burden of showing material effect.[71] As a practical matter, however, the person in the military service should always present evidence that demonstrates that military service has materially affected his ability to prosecute or defend the action.[72]

c. Minimum evidentiary requirements. No uniform standards prescribe the quantity or quality of evidence necessary to support a stay. Each case requires an individual determination based on the evidence. Similar to the burden of proof issues, the requisites vary from jurisdiction to jurisdiction, often based largely on the visceral reaction of the court to the case and on the judicial philosophy of the individual on the bench.

Nevertheless, one obvious requirement exists in all section 201 cases. The moving party must be a "person in the military service" within the ambit of section 101. In a small minority of jurisdictions such a showing has been a sufficient basis for a stay.[73] The vast majority of jurisdictions follow Boone v. Lightner,[74] however, and require something more of the servicemember.

One of the most important factors is often unavailability--that is, the servicemember's ability to attend the court proceedings. If the unavailability is temporary and will end at a fixed date in the relatively near future, the courts will almost always grant a stay. Courts more carefully scrutinize protracted unavailability, particularly when it results from an overseas assignment. In these cases, the courts usually require servicemembers to make some effort to delay their departure or to secure leave to return from their overseas stations. A majority of courts require servicemembers stationed in the continental United States to attempt to obtain leave.[75]

Courts also usually require servicemembers to be diligent in their attempts to appear.[76] A servicemember may satisfy the requirement by showing that the command denied an effort to obtain leave. In other cases, servicemembers may demonstrate diligent efforts to participate in the proceedings and to complete them before an anticipated unavailability begins. In all instances, servicemembers must act in good faith in their otherwise diligent efforts to protect their rights.[77]

The central issue in these evidentiary requirements is whether the case requires the servicemember's presence at trial. The trial courts often give substantial weight to the nature of the action and the relationship of the servicemember to the action. The servicemember's ignorance of the facts in a dispute may militate against a stay. On the other hand, a court may consider the availability of the servicemember either personally or by deposition during the pre-trial period to be the determining factor in denying a stay.

In some situations, courts have consistently denied stays. Denial of stays in appeals involving purely legal issues reflects courts' concern with the need for a servicemember's presence.[78] Courts have also consistently denied stays when granting them would be contrary to public policy. Abatement of a public nuisance is an example that illustrates this policy.[79] Many courts dealing with paternity,[80] custody, and support,[81] however, have favored granting stays.

3-7. Fines and Penalties on Contracts.

Section 202

> When an action for compliance with the terms of any contract is stayed pursuant to this Act no fine or penalty shall accrue by reason of failure to comply with the terms of such contract during the period of such stay, and in any case where a person fails to perform any obligation and a fine or penalty for such nonperformance is incurred a court may, on such terms as may be just, relieve against the enforcement of such fine or penalty if it shall appear that the person who would suffer by such fine or penalty was in the military service when the penalty was incurred and that by reason of such service the ability of such person to pay or perform was thereby materially impaired. (50 U.S.C. App. § 522.)

Section 202 of the Act deals with two types of situations. First, when compliance with the terms of a contract is stayed pursuant to the Act, no fine or penalty shall accrue by reason of failure to comply during the period of the stay. Second, when no stay exists and a fine or penalty is imposed for nonperformance, the court can relieve enforcement if the person was in the military service when the penalty was incurred and his ability to pay or perform was materially impaired.

This section can be applicable to late charges on an installment contract or to a delinquency fine on a promissory note. In these cases, the court must conclude that the maker's military service impaired the ability to pay.

3-8. Stay or Vacation of Execution of Judgments, Attachments.

Section 203

> In any action or proceeding commenced in any court against a person in military service, before or during the period of such service, or within sixty days thereafter, the court may, in its discretion, on its own motion, or on application to it by such person or some person on his behalf shall, unless in the opinion of the court the ability of the defendant to comply with the judgment or order entered or sought is not materially affected by reason of his military service--
>
> (a) Stay the execution of any judgment or order entered against such person, as provided in this Act; and
>
> (b) Vacate or stay any attachment or garnishment of property, money, or debts in the hands of another, whether before or after judgment as provided in this Act. (50 U.S.C. App. § 523.)

This is another "stay" section of the Act. It differs from other stay provisions because it is not a stay of proceedings, but authorizes a court to stay execution of a judgment or order entered against a servicemember. It also authorizes a court to vacate or stay an attachment or garnishment on a servicemember's property. The same basic rules for granting stays under section 201 apply. These rules require good faith on the part of servicemembers. Their military service also must materially affect their ability to comply with the judgment or decree entered against them. The suit giving rise to the judgment may have commenced prior to, during, or within 60 days after military service. Additionally, "as in the case of sections 201, 301, and 302 the court is empowered to order a stay on its own motion if it finds material effect and must grant the stay on the servicemember's motion unless it finds an absence of material effect."[82]

In the proper case, a servicemember might use this section as authority to request a court to reduce the amount of alimony or child support the court has required him to pay.[83] Although the statutory language speaks only of relief in cases brought against the servicemember,[84] courts have granted relief to a husband who initiated a proceeding to determine the extent of his obligation for support and maintenance because of his change in circumstances when he entered military service.[85]

Additionally, one court ruled that once judgment against a servicemember-defendant is entered and stayed, a servicemember cannot question the entry of the judgment when the plaintiff appeals the court's order to suspend collection.[86]

3-9. Duration and Term of Stays; Codefendants Not In Service.

Section 204

> Any stay of any action, proceeding, attachment, or execution, ordered by any court under the provisions of this Act may, except as otherwise provided, be ordered for the period of military service and three months thereafter or any part of such period, and subject to such terms as may be just, whether as to payment in installments of such amounts and at such times as the court may fix or otherwise. Where the person in military service is a co-defendant with others the plaintiff may nevertheless by leave of court proceed against the others. (50 U.S.C. App. § 524.)

This section is a companion provision to other sections of the Act that allow a court to grant a stay of proceedings because of military service. In this regard, with the exception of section 700, none of the stay provisions set a specific duration for the stay. Ideally, absent other considerations, a servicemember can obtain a stay for his entire period of military service and three months thereafter. The actual duration of a stay will frequently depend on the equities of the case.[87] Litigation under this section principally arises when a court allows an action to proceed against an individual who is a co-defendant of the person in military service. A court will stay all proceedings in a consolidated action as to the nonservice defendant when necessary to protect the interest of the servicemember.[88]

When a court grants relief in a factual situation specifically covered by one of the Act's provisions, however, the court must follow the duration provision contained in the specific section rather than the provisions of section 204.

3-10. Statute of Limitations as Affected by Period of Service.

Section 205

> The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment. (50 U.S.C. App. § 525.)

This section of the Act tolls statutes of limitations during the period of military service of any military plaintiff or defendant. Once military service is shown, the period of limitations is automatically tolled for the duration of the service.[89] The courts have held that this section is applicable to state governments,[90] municipal governments,[91] and administrative proceedings.[92] Whether the cause of action accrued prior to or during the period of service is immaterial.[93] This section is inapplicable, however, to periods of limitations imposed by federal internal revenue laws.[94]

Unlike other general relief provisions, section 205 does not require servicemember's to show their military service materially affected their ability to participate in the proceedings.[95] Courts have no discretion in applying section 205, which is always self-executing.[96]

Section 205 sometimes has the effect of a two-edged sword. It can operate both to the advantage and to the disadvantage of a servicemember because it applies to actions by or against the servicemember.[97]

This section tolls any period of limitation established "by any law, regulation, or order . . . in any court, board, bureau, commission, department, or other agency of the government" whether related to administrative proceedings, periods for redemption of real estate, enforcement of tax obligation (not federal taxes) or assessment. Until recently, few cases held it to be inapplicable. In Pannell v. Continental Can Co.,[98] the Fifth Circuit relied on two state court decisions[99] in holding that the Act is inapplicable to a career servicemember. In Pannell, the servicemember purchased real estate during his term of service, then subsequently failed to pay state taxes on the property. The state conducted a tax sale of the property, and the servicemember failed to redeem within the statutory redemption period. The servicemember argued that the redemption period was in the nature of a statute of limitations and was tolled during the period of military service in accordance with section 205. In holding that the period was not tolled, the court said,

> Section 525 is inapplicable to a career servicemember like Colonel Pannell. He is not shown to have been handicapped by his military service from asserting any claim he had prior to the expiration of the prescribed period.[100]

In 1981, the Court of Claims rejected the Pannell analysis. In Bickford v. United States,[101] the court held that section 205 is applicable to all servicemembers, without regard to whether their military status affects their ability to pursue an action. Bickford was a JAGC officer who sued for back pay and allowances arising from his participation in the excess leave program during law school. A 6 year statute of limitations is applicable to such a claim, and Bickford filed suit more than 9 years after his claim accrued. The court held that Bickford's active service after law school tolled the statute and, in a footnote, stated that Pannell was wrongly decided.

Whether other courts will require a showing of prejudice or material effect remains to be seen. Only in divorce actions where desertion was not attributed to military service[102] and in probate proceedings[103] have courts relaxed the requirements of section 205.

Recently, the government has invoked the doctrine of laches in wrongful discharge claims against the United States. The government has argued that, although military service tolls the statute of limitations, lengthy delays in filing claims prejudice the government's ability to defend and also significantly increase the government's liability to pay for unrendered services it does not need or want.[104] The laches theory has had mixed success in the courts, but it is another example of how defendants may avoid the effects of section 205.

3-11. Maximum Rate of Interest.

Section 206

> No obligation or liability bearing interest at a rate in excess of 6 per centum per annum incurred by a person in military service prior to his entry into such service shall, during any part of the period of military service which occurs after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942, bear interest at a rate in excess of 6 per centum per annum unless, in the opinion of the court, upon application thereto by the obligee, the ability of such person in the military service to pay interest upon such obligation or liability at a rate in excess of 6 per centum per annum is not materially affected by reason of such service, in which case the court may make such order as in its opinion may be just. As used in this section the term

> "interest" includes service charges, renewal charges, fees, or any other charges (except bona fide insurance) in respect of such obligation or liability. (50 U.S.C. App. § 526.)

This section provides that the rate of interest on debts incurred by servicemembers prior to service shall not exceed 6 percent per annum during their period of service. To avoid application of this section, a creditor must show that the ability of the servicemember to pay more is not materially affected by reason of military service. The term "interest" includes both service and carrying charges.

As a consequence of this section, when a servicemember owes money and the interest rate is more than 6 percent per annum, the rate must be reduced to 6 percent when the debtor enters military service. The protection ends, however, if the creditor convinces a court that the servicemember's ability to pay is not materially affected by military service. The creditor's burden of persuasion is less when the servicemember is a volunteer and service occurs during peacetime.

This section does not apply to transactions entered into after entry into military service.[105] Attorneys should consider this section, however, in connection with section 700 in making any application for relief from financial obligations.

3-12. Federal Income Taxes.

Section 207

> Section 205 of this Act shall not apply with respect to any period of limitation prescribed by or under the internal revenue laws of the United States. (50 U.S.C. App. § 527.)[106]

FOOTNOTES

1. Case v. Case, 124 N.E.2d 856 (Ohio Probate Ct. 1955).

2. Id.

3. E.g., In re Ehlke's Estate, 250 Wisc. 583, 27 N.W.2d 754 (1947); In re Cool's Estate, 19 N.J. Misc. 236, 18 A.2d 714 (1941); Lavender v. Gernhart, 201 Md. 92, 92 A.2d 751 (1952); In re Larson, 81 Cal. App. 2d 258, 183 P.2d 688 (1947).

4. E.g., Blankenship v. Blankenship, 263 Ala. 297, 82 So. 2d 335 (1955); Reynolds v. Reynolds, 21 Cal. 2d 580, 134 P.2d 251 (1943); In re Cool's Estate, 19 N.J. Misc. 236, 18 A.2d 714.

5. Blankenship v. Blankenship, 263 Ala. at 303, 82 So. 2d at 340. See also Cloyd v. Cloyd, 564 S.W.2d 337 (Mo. App. 1978).

6. In re Cool's Estate, 19 N.J. Misc. at 238, 18 A.2d at 716-17.

7. Blankenship v. Blankenship, 263 Ala. 297, 82 So. 2d 335.

8. Reynolds v. Reynolds, 21 Cal. 2d 580, 134 P.2d 251.

9. Vera v. Vera, 14 Ohio 2d 261, 171 N.E.2d 384 (1961).

10. Rutherford v. Bentz, 354 Ill. App. 532, 104 N.E.2d 343 (1952).

11. Bowery Savings Bank v. Pellegrino, 185 Misc. 912, 58 N.Y.S.2d 771 (Sup. Ct. 1945).

12. Skates v. Stockton, 140 Ariz. 505, 683 P.2d 304 (Ariz. Ct. App. 1980); see also Artis-Wergin v. Artis-Wergin, 444 N.W.2d 750 (Wis. Ct. App. 1989) (letter from legal assistance attorney requesting a stay constituted an appearance; letter failed to invoke SSCRA).

13. E.g., Rutherford v. Bentz, 345 Ill. App. 532, 104 N.E.2d 343; In re Ehlke's Estate, 250 Wisc. 583, 27 N.W.2d 754.

14. See Kerig, The Absent Defendant and the Federal Soldiers' and Sailors' Civil Relief Act, 33 N.Y.U.L. Rev. 975, 981 (1958).

15. See United States v. Simmons, 508 F. Supp. 552 (E.D. Tenn. 1980) (court required more than a statement that no interested parties were in the military service).

16. Bedwell v. Bedwell, 68 Idaho 405, 195 P.2d 1001 (1948).

17. United States v. Kaufman, 453 F.2d 306 (2d Cir. 1971).

18. Haller v. Walczak, 347 Mich. 292, 79 N.W.2d 622 (1956).

19. E.g., Vision Service Plan of Penn. v. Penn. AFSCME Health and Welfare Fund, 326 Pa. Supr. 474, 474 A.2d 339 (Pa. Super. Ct. 1984); Poccia v. Benson, 99 R.I. 364, 208 A.2d 102 (1965).

20. Akers v. Bonifasi, 629 F. Supp. 1212 (M.D. Tenn. 1984).

21. Courtney v. Warner, 290 So. 2d 101 (Fla. App. 1974).

22. Thompson v. Lowman, 108 Ohio App. 453, 155 N.E.2d 258, aff'g, 155 N.E.2d 250 (Ohio C.P. 1958).

23. Id., at 456, 155 N.E.2d at 261. See also Hernandez v. King, 411 So.2d 758 (La. Ct. App. 1982); Krumme v. Krumme, 6 Kan. App. 2d 939 (Ct. App. 1981); Unsatisfied Claim and Judgment Fund Bd. of Fortney, 264 Md. 246, 285 A.2d 641 (1972); Davidson v. General Finance Corp., 295 F. Supp. 878, (N.D. Ga. 1968).

24. 50 U.S.C. App. § 520 (1982).

25. Reynolds v. Reynolds, 21 Cal. 2d 580, 134 P.2d 251.

26. Allen v. Allen, 30 Cal. 2d 433, 182 P.2d 551 (1947).

27. *E.g.*, United States v. Kaufman, 453 F.2d 306 (1971).

28. Kerig, *supra* note 14 at 980.

29. Borden, The Soldiers' and Sailors' Civil Relief Act, 8 Prac. Law. 65, 68 (1962).

30. Bowery Savings Bank v. Pellegrino, 185 Misc. 912, 58 N.Y.S.2d 771.

31. *In re* Ehlke's Estate, 250 Wisc. 583, 27 N.W.2d 754.

32. *In re* Cool's Estate, 19 N.J. Misc. at 239 18 A.2d at 717.

33. *In re* Ehlke's Estate, 250 Misc. 583, 27 N.W.2d 754.

34. Rutherford v. Bentz, 345 Ill. App. 532, 104 N.W.2d 343.

35. Sanders v. Sanders, 63 Wash. 2d 709, 713, 388 P.2d 942, 945 (1964).

36. Davidson v. GFC, 295 F. Supp. 878 (N.D. Ga. 1968).

37. *E.g.*, Morris Plan Bank v. Hadsell, 202 Ga. 52, 41 S.E.2d 881 (1947); Radich v. Bloomberg, 140 N.J. Eq. 289, 54 A.2d 247, *cert. denied*, 332 U.S. 810 (1947).

38. Artis-Wergin v. Artis-Wergin, 444 N.W.2d 750 (Wis. Ct. App. 1989) (legal assistance attorney's letter to the court was "an appearance"); Skates v. Stockton, 140 Ariz. 505, 683 P.2d 304 (Ct. App. 1984) (legal assistance attorney's letter to the court invoking the Soldiers' and Sailors' Civil Relief Act was "an appearance"); *see also* Hayn, *Soldiers' and Sailors' Civil Relief Act Update*, The Army Lawyer, Feb. 1989, at 40; Reinold, *Use of the Soldiers' and Sailors' Civil Relief Act to Ensure Court Participation - Where's the Relief?*, The Army Lawyer, June 1986, at 17.

39. *In re* Ehlke's Estate, 250 Wisc. 583, 27 N.W.2d 754.

40. Krumme v. Krumme, 6 Kan. App. 2d 939, 639 P.2d 814 (Ct. App. 1981).

41. LaMar v. LaMar, 19 Ariz. App. 128, 505 P.2d 566 (1973). Becknell v. D'Angelo, 506 S.W.2d 688 (Tex. Civ. App. 1974).

42. *E.g.*, Thompson v. Lowman, 108 Ohio App. 453, 155 N.E.2d 258, *aff'g* 155 N.E.2d 250; Haller v. Walczak, 347 Mich. 292, 79 N.W.2d 622 (1956); Allen v. Allen, 30 Cal. 2d 433, 182 P.2d 551;

43. Becknell v. D'Angelo, 506 S.W.2d 688 (Tex. Civ. App. 1974).

44. Federal Home Loan Mortgage Corp. v. Taylor, 318 So. 2d 203 (Fla. App. 1975).

45. *See* Saborit v. Welch, 108 Ga. 611, 133 S.E.2d 921 (1963) (defendant's absence overseas in military service prima facie shows he was prejudiced in making his defense). *Cf*. LaMar v. LaMar, 19 Ariz. App. 128, 505 P.2d 566 (no abuse of discretion to refuse to vacate default divorce judgment obtained against servicemember stationed abroad, where he was fully informed of action, took no steps to protect any rights he might have cared to assert, and made no attempt to stay proceedings).

46. Burgess v. Burgess, 234 N.Y.S.2d 87 (1962).

47. Wilterdink v. Wilterdink, 81 Cal. App. 2d 526, 184 P.2d 527 (1947).

48. Gray v. Dillon, 97 Ariz. 16, 396 P.2d 251 (1964). *See also* Urbana College v. Conway, 29 Ohio App. 3d 13, 502 N.E.2d 675 (Ct. App. 1985) (an independent counterclaim arising from the same transaction, although valid, is not a meritorious defense); LaMar v. LaMar, 19 Ariz. App. 128, 505 P.2d 566 (motion to vacate must not only declare that movant has a good and meritorious defense to the action but must also set out what the defense is).

49. Flagg v. Sun Investment & Loan Corp., 373 P.2d 226 (1962).

50. Martin v. Martin, 200 Tenn. 191, 292 S.W.2d 9 (1956).

51. Kirby v. Holman, 238 Iowa 355, 25 N.W.2d 664 (1947).

52. Bagley, The Soldiers' and Sailors' Civil Relief Act--A Survey, 45 Mil. L. Rev. 1, 12 (1969).

53. Id.

54. See Mays v. Tharpe and Brooks, Inc., 143 Ga. App. 815, 240 S.E.2d 159 (1977) (a person in the military is entitled as a matter of law to a stay of proceedings against him upon his bare application stating that he is at the time actively in military service).

55. See also McCoy v. McSorley, 119 Ga. App. 603, 168 S.E.2d 202 (1969) (stays in judicial proceedings where persons in military service are involved should be liberally construed in favor of servicemember).

56. Hempstead Bank v. Gould, 54 Misc. 2d 410, 282 N.Y.S.2d 602 (1967).

57. Grimes v. State of Oklahoma, 377 P.2d 847 (1963).

58. Moulder v. State, 118 Ga. App. 87, 162 S.E.2d 785 (1968).

59. Forker v. Pomponio, 60 N.J. Super. 278, 158 A.2d 849 (1960).

60. Semler v. Oertwig, 234 Iowa 233, 12 N.W.2d 265 (1943).

61. See Booker v. Everhart, 33 N.C. App. 1, 234, S.E.2d 46 (1977) rev'd 294 N.C. 146, 240 S.E.2d 360 (1978); Runge v. Fleming, 181 F. Supp. 224 (N.D. Iowa 1960).

62. City of Cedartown v. Pickett, 194 Ga. 508, 22 S.E.2d 318 (1942).

63. Boone v. Lightner, 319 U.S. 561, reh'g denied, 320 U.S. 809 (1943).

64. Mays v. Tharpe and Brooks, Inc., 143 Ga. App. 815, 240 S.E.2d 159; see also Boothe v. Henrietta Egleston Hosp. for Children, 168 Ga. App. 352, 308 S.E.2d 844 (Ct. App. 1984).

65. Coburn v. Coburn, 412 So.2d 947 (Fla. Ct. App. 1982) (trial court abused its discretion in refusing to postpone proceedings concerning child custody, alimony, attorneys fees, and costs until husband's military service could not hamper his ability to defend the action).

66. Fourth Nat'l Bank in Wichita v. Hill, 181 Kan. 685, 314 P.2d 312 (1957); see also Power v. Power, 720 S.W.2d 683 (Tex. Ct. App. 1986) (bare statement requester was in military was insufficient to establish material effect).

67. See Graves v. Bedner, 167 Neb. 847, 95 N.W.2d 123 (1959); Tabor v. Miller, 389 F.2d 645 (3rd Cir. 1968).

68. Sullivan v. Storz, 156 Neb. 177, 55 N.W.2d 499 (1952).

69. McCoy v. McSorley, 119 Ga. App. 603, 168 S.E.2d 202; see also Moulder v. Steele, 118 Ga. App. 87, 162 S.E.2d 785 (1968) (grant or denial of stay is final judgment on collateral matter of stay and is appealable).

70. Boone v. Lightner, 319 U.S. 561, 569 (1943).

71. See, e.g., Coburn v. Coburn, 412 So. 2d 947 (Fla. Ct. App. 1982 (burden is on party who opposes stay of military service); Bond v. Bond, 547 S.W.2d 43 (Tex. Civ. App. 1976) (trial court has wide discretion in deciding which party should carry the burden of proof on the issue of prejudice); Mayfield Sales Inc. v. Sams, 169 So. 2d 150 (La. App. 1964) (burden on defendant in military service); Holzman's Furniture Store v. Schrapf, 39 So. 2d 450 (La. App. 1949) (does not impose burden on party resisting application for stay to satisfy trial court by clear and convincing evidence that servicemember's rights are not impaired; Gates v. Gates, 197 Ga. 11, 25 S.E.2d 108 (1943) (may obtain evidence from either party); Bowsman v. Peterson, 45 F. Supp. 741 (1942) (burden on plaintiff resisting application for stay).

72. See, e.g., Hackman v. Postel, 675 F. Supp. 1132 (N.D. Ill. 1988) (to invoke stay provision, servicemember must show actual unavailability and an adverse effect created by his absence); Roberts v. Fuhr, 523 So.2d 20

(Miss. 1987) (servicemember invoking statutory stay provision has burden of showing defense will be materially affected by his military service); Palo v. Palo, 299 N.W.2d 577 (D. S.D. 1980) (stay not granted to a servicemember who failed to demonstrate an attempt to take leave, actual unavailability, and adverse effects from absence at trial). Contra Coburn v. Coburn, 412 So.2d 947 (Fla. App. Ct. 1982) (burden of persuasion in issue of material effect is on party opposing servicemember's request for a stay).

73. Mays v. Tharpe and Brooks, 143 Ga. App. 815, 240 S.E.2d 159. But see Norris v. Superior Court of Mohave County, 14 Ariz. App. 183, 481 P.2d 553 (1971) (denial of continuance was not an abuse of discretion where plaintiff was in military service and stationed in Germany, where his affidavit did not state that he would be unavailable for trial, that he had requested leave, that it was not possible to obtain leave or that his rights would be impaired if matter would be tried in his absence); Roark v. Roark, 201 S.W.2d 862 (Tex. Civ. App. 1947).

74. Boone v. Lightner, 319 U.S. 561 (1943).

75. E.g., Hackman v. Postel, 675 F. Supp. 1132 (N.D. Ill. 1988); Palo v. Palo, 299 N.W.2d 577 (D. S.D. 1980); Graves v. Bedner, 167 Neb. 847, 95 N.W.2d 123.

76. See, e.g., Palo v. Palo, 299 N.W.2d 577 (court noted that servicemember had not attempted to take leave and had not demonstrated his unavailability).

77. See Zitomer v. Holdsworth, 409 F.2d 724 (3rd Cir. 1971); Booker v. Everhart, 33 N.C. App. 1, 234 S.E.2d 46 (1977), rev'd 294 N.C. 146, 240 S.E.2d 360.

78. Cornelius v. Jackson, 201 Okla. 667, 209 P.2d 166 (1948); Rosier v. McDaniel, 129 W. Va. 401, 40 S.E.2d 832 (1946).

79. State ex rel. Swanson v. Heaton, 237 Iowa 564, 22 N.W.2d 815 (1946); City of Cedartown v. Pickett, 194 Ga. 508, 22 S.E.2d 318 (1942).

80. Mathis v. Mathis, 236 So. 2d 775 (Miss. 1970) (paternity suit is of such personal and intimate nature that absence materially affects defense unless a specific finding is made to the contrary).

81. Derby v. Kim, 238 Ga. 429, 233 S.E.2d 156 (1977).

82. Bagley, supra note 52, at 13.

83. McGlynn v. McGlynn, 178 Misc. 530, 35 N.Y.S.2d 6 (Sup. Ct. 1942).

84. Rochester Ropes v. Beckworth Havens, 182 Misc. 548, 49 N.Y.S.2d 126 (Sup. Ct. 1944).

85. McKinney v. McKinney, 182 Misc. 903, 50 N.Y.S.2d 8 (Sup. Ct. 1944).

86. Akron Auto Finance Co. v. Stonebraker, 66 Ohio App. 507, 35 N.E.2d 585 (1941).

87. E.g., Korsch v. Lambing, 28 N.Y.S.2d 167 (Sup. Ct. 1941).

88. Heck v. Anderson, 234 Iowa 379, 12 N.W.2d 849 (1944).

89. Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975).

90. Parker v. State, 185 Misc. 584, 57 N.Y.S.2d 242 (Ct. Cl. 1945).

91. Calderon v. City of New York, 184 Misc. 1057, 55 N.Y.S.2d 674 (Sup. Ct. 1945).

92. Shell Oil Co. v. Industrial Comm'n, 407 Ill. 186, 94 N.E.2d 888 (1950).

93. In re Thompson v. Reedman, 201 F. Supp. 837 (E.D. Pa. 1961); Wolf's Estate, 264 F.2d 82 (3rd Cir. 1959).

94. SSCRA § 207. Stone v. C.I.R., 73 T.C. 617 (1980); see Allen v. United States, 439 F. Supp. 463 (D.C. Cal. 1977) (statute of limitations which barred relief to taxpayer in action brought to recover alleged overpayment

of federal income tax paid while taxpayer was a member of armed services was not tolled by the Act).

95. Syzemore v. Sacramento County, 127 Cal. Rptr. 741, 55 C.A.3d 517 (1976) (section is applicable without regard to prejudice to servicemember).

96. Newman v. Newman, 234 Ga. 297, 216 S.E.2d 79 (1975); Van Heest v. Verch, 58 N.J. Super. 427, 156 A.2d 301 (1959).

97. Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); *see also* Carr v. United States, 422 F.2d 1007 (4th Cir. 1970) (tolls a limitation provision if action is either against any person in military service or is against his heirs, executors, administrators, or assigns). *But see* Card v. American Brands Corp., 401 F. Supp. 1186 (D.C.N.Y. 1975), and Wanner v. Glen Ellen Corp., 373 F. Supp. 983 (D.C. Vt. 1974) (holding statute of limitations not tolled for wife of servicemember bringing suit in her own name).

98. Pannell v. Continental Can Co., 554 F.2d 216 (5th Cir. 1977).

99. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971); King v. Zagorski, 207 So. 2d 61 (Fla. D. Ct. App. 1968).

100. 554 F.2d 216, 225 (1977).

101. Bickford v. United States, 656 F.2d 636 (Ct. Cl. 1981).

102. Rebar v. Rebar, 165 Pa. Super. 341, 67 A.2d 598 (1949).

103. McCoy v. Atlantic Coast Lines R. Co., 229 N.C. 57, 47 S.E.2d 532 (1948).

104. Deering v. United States, 620 F.2d 242 (Ct. Cl. 1980); *see also* Foster v. United States, 733 F.2d 88 (Fed. Cir. 1984) (laches effective as an affirmative defense against claims filed seven, eight, and nine years after accrual); Hankins v. United States, 7 Cl. Ct. 698 (1985). *See contra* Cornetta v. United States, 851 F.2d 1372 (Fed. Cir. 1988) (government failed to demonstrate

sufficient prejudice from defendant's delay to invoke defense of laches).

105. Shield v. Hall, 207 S.W.2d 997 (Tex. 1948).

106. See Stone v. C.I.R., 73 T.C. 617 (1980) (the section 205 provision tolling the statute of limitations is inapplicable to any limitations period under internal revenue laws).

Chapter 4

Rent, Installment Contracts, Mortgages, Liens, Assignments, Leases

4-1. Purpose and Scope

This chapter examines Articles III and VII of the Soldiers' and Sailors' Civil Relief Act. Article III contains sections 300 through 306, which relate to evictions, lease terminations, installment sales contracts, repossessions, mortgage foreclosures on real and personal property, storage lien foreclosures, and the rights of life insurance contract assignees. The benefits of Article III are the only ones the Act extends to both servicemembers and their family members. Article VII contains section 700 as its sole section. This section permits servicemembers to seek relief from financial obligations before defaulting on the payments. Except for evictions and storage lien foreclosures under Article III, the benefits available under these two articles apply only to transactions entered into by servicemembers before they enter military service.

4-2. Eviction and Distress

Section 300

(1) No eviction or distress shall be made during the period of military service in respect of any premises for which the agreed rent does not exceed $150 per month, occupied chiefly for dwelling purposes by the wife, children, or other dependents of a person in military service, except upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession.

(2) On any such application or in any such action the court may, in its discretion, on its own motion, and shall, on application, unless in the opinion of the court the ability of the tenant to pay the agreed rent is not materially affected by reason of such military service, stay the proceedings for not longer than three months, as provided in this Act, or it may make such other

order as may be just. Where such stay is granted or other order is made by the court, the owner of the premises shall be entitled, upon application therefor, to relief in respect of such premises similar to that granted persons in military service in sections 301, 302, and 500 of this Act to such extent and for such period as may appear to the court to be just.

(3) Any person who shall knowingly take part in any eviction or distress otherwise than as provided in subsection (1) hereof, or attempts so to do, shall be guilty of a misdemeanor, and shall be punishable by imprisonment not to exceed one year or by fine not to exceed $1,000, or both.

(4) The Secretary of the Army, the Secretary of the Navy, or the Secretary of the Treasury with respect to the Coast Guard, as the case may be, is empowered, subject to such regulations as he may prescribe, to order an allotment of the pay of a person in military service in reasonable proportion to discharge the rent of premises occupied for dwelling purposes by the wife, children, or other dependents of such person. (50 U.S.C. App. § 530.)

a. General. This section protects servicemembers and their dependents from eviction for nonpayment of rent.[1] It provides criminal sanctions[2] for those who knowingly take part in the eviction or attempted eviction of the spouse, children, or other dependents of a servicemember from any premises occupied as a dwelling and rented for less than $150 per month. In these circumstances, a landlord must obtain a court order authorizing an eviction.[3] The Act does not define the terms "eviction" and "distress," but the courts have applied their commonly accepted meanings in deciding cases arising under this section.[4]

b. Application. The provisions of this section apply when the following conditions exist:

(1) A landlord attempts an eviction or distress[5] during the period of military service, or after receipt of orders to report to duty as provided in section 106 of the Act.

(2) The premises are occupied as a dwelling by the spouse, children, or other dependents of the servicemember.[6]

(3) The agreed rent does not exceed $150 per month.

Although section 300 purports to apply only to those cases in which the rent does not exceed $150, at least one court has granted relief when the amount of monthly rent exceeded $150. In Balconi v. Dvascas,[7] the monthly rent was $340, but the court held that a servicemember's child and ex-wife were eligible under the Act for protection against eviction. The court concluded that the rent was actually less than $150 if adjusted for inflation occurring since 1966, when Congress raised the maximum rent from $80 to $150.

Courts have required that a landlord-tenant relationship exist since this section contemplates a disturbance of that relationship.[8] One court has, however, held this section to be applicable to a constructive eviction by the owner of a dwelling in which a servicemember's dependents were sub-tenants of the lessee.[9]

c. Action in court; material effect. A landlord may evict a servicemember or his dependents only "upon leave of court granted upon application therefor or granted in an action or proceeding affecting the right of possession." Although not clearly stated in the section, a fair and reasonable interpretation of the preceding phrase indicates that the landlord should first obtain a court order authorizing the eviction.[10] The landlord may obtain the court order by applying to a proper court and showing that the servicemember's military service has no material effect upon the ability of his dependents to pay the rent.

Since the purpose of this section is to provide the servicemember protection against an eviction for nonpayment of rent,[11] the court must determine, in addition to whether a landlord-tenant relationship exists,[12] whether the tenant is a dependent of the servicemember. Additionally, the court must determine whether the tenant's ability to pay the agreed rent is materially affected by the servicemember's military service. Material effect is present when the servicemember does not earn sufficient income to permit him to pay the rent.[13] It is immaterial whether the dwelling was rented before or after entry on active duty.[14]

d. Nature and extent of relief for lessee. If the lessor files an application for an eviction order and the court finds that military service has materially affected the servicemember's ability to pay the rent, the court may either stay the eviction proceedings for not longer than three months,[15] or "it may make such other order as may be just."[16] In granting a three month stay, one court held that if the servicemember paid the fourth month's rent, he could not be evicted for failure to pay the previous rent. Also, the landlord could not evict him for not paying the rent that accrued during the period of the stay.[17] His obligation to pay the arrears was not abated, however.

e. Extension of relief to lessor. Section 300 also permits the landlord to apply for certain relief when the court has granted a stay of eviction. The landlord, in the court's discretion, may obtain a court order providing protection similar to a servicemember's protection under sections 301, 302 and 500 of the Act.

f. Compulsory rental deductions. Section 300(4) authorizes the Secretaries of the respective services to order allotments from the pay of a servicemember to defray costs of renting premises occupied by the servicemember's dependents. The Secretary of the Army has implemented this authority in Army Regulation 37-104-3.[18] In each case, the Secretary must order the deduction. Deductions will be ordered only when a court of competent jurisdiction has rendered a judgment or order directing payment, or when a commander submits a recommendation to HQDA (DACF-IC-PA), supported by a statement that a deduction is necessary to permit the continued occupancy of the dwelling by the member's dependents.

4-3. Installment Contracts

Section 301

(1) No person who has received, or whose assignor has received, under a contract for the purchase of real or personal property, or of lease or bailment with a view to purchase of such property, a deposit or installment of the purchase price, or a deposit or installment under the contract, lease, or bailment, from a person or from the assignor of a person who, after the date of payment of such deposit or installment, has entered the military service, shall exercise any right or option under such contract to rescind or terminate the contract or resume possession of the property for nonpayment of any installment thereunder due for any other breach of the terms thereof occurring prior to or during the period of such military service, except by action in a court of competent jurisdiction.

(2) Any person who shall knowingly resume possession of property which is the subject of this section otherwise than as provided in subsection (1) of this section or in section 107, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by a fine not to exceed $1,000, or both.

(3) Upon the hearing of such action the court may order the repayment of prior installments or deposits or any part thereof, as a condition of terminating the contract and resuming possession of the property, or may, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, order a stay of proceedings as provided in this Act unless, in the opinion of the court, the ability of the defendant to comply with the terms of the contract is not materially affected by reason of such service; or it may make such other disposition of the case as may be equitable to conserve the interest of all parties. (50 U.S.C. App. § 531.)

a. General. Section 301 is designed to protect the servicemember who, prior to entry into military service,[19] has entered an installment contract for the purchase of real or personal property. If the servicemember's ability to make the payments is materially affected by his service, the vendor is prohibited from taking action under the contract without authority from a proper court.

b. Application. This section applies if the servicemember has entered either an installment contract for the purchase of real or personal property, or a contract of lease or bailment with a view to purchase real or personal property, prior to entry into military service. In addition, the servicemember must have paid, prior to entry into military service, a deposit or installment under the contract. The vendor is then prohibited from exercising any right or option under the contract to rescind or terminate the contract, to resume possession of the property for nonpayment of any installment due, or to breach the terms, except by action in a court of competent jurisdiction. It is immaterial whether the nonpayment or other breach occurred prior to or during the period of military service.[20]

This section does not prevent the parties from entering into a written agreement pertaining to repossession or forfeiture of the property, provided the parties execute the agreement subsequent to the servicemember's entry into active duty or his receipt of notice of induction.[21]

This section has no application to installment contracts entered into after entry upon active duty.[22] Nor does it apply where a deposit or installment has not been paid by or on behalf of the servicemember before he receives an induction notice or before he enters active duty.[23]

c. Court action required. As previously noted, this section prohibits the vendor from enforcing any of his rights under the contract except by action in a court of competent jurisdiction.[24] Section 301(3) provides that "upon the hearing of such action the court may order . . ." one of three possible courses of action.[25] This phrase, along with the phrase, "action in a court of competent jurisdiction," indicates that the vendor must have a court order before taking any action with respect to the property in question.[26]

This section, however, does not prevent the court from taking action to bring the property into judicial custody. In *Universal C.I.T. Credit Corp. v. Ganter*,[27] the court construed "action in a court of competent jurisdiction" and held that the issuance and delivery to the sheriff of a summons, complaint, requisition, affidavit, and an action in replevin constituted an "action in a court of competent jurisdiction as required by section 301 of the Soldiers' and Sailors' Civil Relief Act . . . and the action by the sheriff will not violate the provisions of that section."[28]

Court procedure is mandatory under this section of the Act.[29] Property repossessed without benefit of the requisite court action will subject the creditor to a suit for wrongful conversion[30] and criminal liability. In addition, several cases indicate that where oppression, fraud, or malice on the part of the creditor can be shown, punitive damages may be awarded.[31]

d. *Nature and extent of relief*. When an action by a creditor-vendor comes before a court under this section, three alternative courses of action are open to the court. First, the court may order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property. Second, the court may order a stay of the proceedings,[32] as provided in this Act, during the period of military service and for 3 months thereafter.[33] Third, the court may make such other disposition of the case as may be equitable to conserve the interests of all parties.[34] These three types of relief are predicated upon a finding that the ability of the servicemember to meet his obligation is or has been materially affected by reason of his military service.[35]

Courts have exercised their equitable powers in a variety of ways. In a case where the court found that a servicemember's ability to comply had been materially affected by his military service, but any delay in enforcement would impose an "unnecessary, unexpected and unjustifiable hardship" on the creditor, "without bringing any benefit" to the servicemember, the court refused to grant a stay and resorted to its equitable powers to resolve the dilemma. Because the value of the security exceeded the amount due under the contract, the property was ordered sold, thereby terminating the servicemember's liability while the creditor received the balance due on the contract.[36] In another case in which the security for the obligation would have been destroyed or so diminished in value as to render it useless, the court ordered it sold and the proceeds divided proportionately.[37]

e. Material effect. In determining whether military service materially affects a servicemember's ability to meet his obligations, the court may compare his financial condition prior to entry on active duty with his condition while in military service.[38] Thus, where it was shown that the plaintiff had defaulted prior to entry into military service and that he earned more money while in the military service than as a civilian, the court properly refused to stay the proceedings, holding that the plaintiff failed to prove that his service in the Navy impaired his ability to meet obligations.[39]

Another factor that courts have considered is when the default or noncompliance by the servicemember began. When a pattern of noncompliance was begun long before the debtor's induction into the service, it supported the court's belief that military service was not the cause of the debtor's inability to meet the obligation.[40] Consequently, the servicemember seeking relief under this section must show hardship or material effect before he is entitled to protection under this section of the Act.

f. Criminal sanctions. As in other sections of the Act, subsection 301(2) provides that anyone who knowingly resumes possession of property that is subject to this section without taking the action required by subsection (1), or attempts to do so, shall be guilty of a misdemeanor. The punishment prescribed is imprisonment for not more than one year or a fine of not more than $1,000 or both.

4-4. Mortgage Foreclosures

Section 302

(1) The provisions of this section shall apply only to obligations secured by mortgage, trust deed, or other security in the nature of a mortgage upon real or personal property owned by a person in military service at the commencement of the period of the military service and still owned by him which obligations originated prior to such person's period of military service.

(2) In any proceeding commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to comply with the terms of the obligation is not materially affected by reason of his military service--

(a) stay the proceedings as provided in this Act; or

(b) make such other disposition of the case as may be equitable to conserve the interests of all parties.

(3) No sale, foreclosure, or seizure of property for nonpayment of any sum due under any such obligation, or for any other breach of the terms thereof, whether under a power of sale, under a judgment entered upon warrant of attorney to confess judgment contained therein, or otherwise, shall be valid if made after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 and during the period of military service or within three months thereafter, except pursuant to an agreement as provided in section 107, unless upon order previously granted

by the court and a return thereto made and approved by the court.

(4) Any person who shall knowingly make or cause to be made any sale, foreclosure, or seizure of property, defined as invalid by subsection (3) hereof, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (50 U.S.C. App. § 532.)

a. General. This section contains language similar to section 301 and attempts to accomplish similar results. Section 302, however, is specifically designed to protect servicemembers against foreclosure of mortgages and other security instruments. The essential difference between these two sections is that section 302 requires a secured obligation, whereas section 301 does not require a security interest in the property. Section 302 requires the secured creditor to seek a court order authorizing foreclosure.

b. Application. Relief under section 302 is available to servicemembers and, pursuant to section 306, to their dependents. Subsection (1) clearly defines the obligations to which section 302 applies. In order to come within the provisions of this section, the servicemember must establish the following:

(1) That relief is sought on an obligation secured by (a) mortgage, (b) trust deed or (c) other security in the nature of a mortgage on either real or personal property;

(2) That the obligation originated prior to his entry into military service;

(3) That the property was owned by him or his dependent prior to the commencement of military service; and

(4) That the property is still owned by the servicemember or his dependent at the time relief is sought.[41]

c. Action in court. Subsection (3) of section 302 prohibits the foreclosure and sale of mortgaged property in the absence of an agreement executed subsequent to the servicemember's receipt of notice of induction,[42] or in the absence of a court order, regardless of any contractual provisions.[43] A foreclosure in violation of subsection (3) may render the action voidable, and might also subject the mortgagee or trustee to criminal prosecution.[44]

The requirement for a court order prior to foreclosure and sale of mortgaged property is contained in the clause, "unless upon an order previously granted by the court. . . ." Two courts construing this clause have differed as to exactly when the order must have been previously granted. A New Jersey court held that the order must have been granted prior to the servicemember's entry on active duty.[45] A New York court, however, held that this clause means that the order must have been granted prior to foreclosure and not prior to the servicemember's entry on active duty.[46] The New York rule appears to be the correct rule, in view of the language of section 302(2): "In any proceedings commenced in any court during the period of military service to enforce such obligation arising out of nonpayment of any sum thereunder due or out of any other breach of the terms thereof occurring prior to or during the period of such service. . . ." The New Jersey rule could not reasonably be applied to a breach which occurred after the mortgagor's entry upon active duty.

d. Nature of ownership. The Act requires the servicemember to have "owned" the mortgaged property prior to his entry upon active duty, continuing up to the time relief is sought from the court. Several questions relating to the nature of the ownership required to bring an obligation within the Act's coverage have been litigated.

Generally, the courts have interpreted the word "owned" to mean equitable and legal interests in property. This was the usage given under the Act of 1918[47] and the same meaning has been applied to the present Act.[48] While the weight of authority supports this proposition, difficulties arise when innocent third parties who are purchasers for value without notice are involved. In these instances, the courts avoid exercising their equitable powers in favor of the servicemember by stating that "equitable" title must be recorded.[49]

e. *Material effect*. A mortgagee bringing a foreclosure action will provide the court with proof of the existence and the extent of the mortgage debt upon which suit is instituted and the date of default in payment. If favorable to him the mortgagee will often present the mortgagor's pre-service payment record. This is done when the record demonstrates pre-service default or a continuous pattern of tardy payments.[50]

Having determined that the servicemember "owned" the property as required by section 302(1), the trial court must then form an opinion on the ability of the servicemember to meet his financial obligations. That is, the court must determine whether military service has materially affected the servicemember's ability to discharge his pre-service responsibilities in the manner agreed upon. As one court has stated, "The criteria, then, is a combination of two factors, *i.e.*, (1) whether the defendant's inability to comply results by reason of such military service, and (2) that such military service has materially affected the ability to comply."[51]

To secure relief under section 302, the servicemember should provide the court with sufficient financial information on the material effect of military service.[52] Two pieces of financial information are always essential: pre-service income and in-service income. Pre-service income, out of which the agreed mortgage payments previously were paid on time,[53] is considered as a standard. In-service income must not only be smaller, but it must be insufficient to reasonably maintain the servicemember before a court will grant relief.[54] Proof of in-service income should include showing the amount of (1) military pay and allowances, (2) allotments to dependents, and (3) any other nonmilitary income, even if earned by dependents. In-service income should be treated as a net amount, because proof of any additional expense caused by military service is proper. When material effect is found, the courts exercise their discretion in fashioning appropriate relief.[55]

f. Nature of relief. In a mortgage foreclosure proceeding, the Act generally provides the servicemember with three types of relief, which, under proper circumstances, are as follows:

(1) A stay of the proceedings, or an extension of the maturity dates of his obligations by way of diminished payments;

(2) Where foreclosure judgment has already been ordered, a reopening or setting aside of the judgment in order that the reviewer may assert a defense;[56] and

(3) Where a sale has been had under a judgment of foreclosure, invocation of the statutory redemption period, extended by a period equal to his military service.[57]

The extent of the mortgagor's financial disability resulting from military service heavily influences a court's decision on the measure of relief to be granted. Courts attempt to make equitable disposition of individual cases on their particular facts, in an effort "to conserve the interests of all parties." This effort frequently results in granting the mortgagor, in appropriate cases, some form of conditional relief.

Conditional relief usually constitutes a stay of the foreclosure proceedings on condition that the mortgagor make some partial periodic payment on the outstanding mortgage debt.[58] In its discretion, the court determines to which of the incidents of the debt the payment will be applied. Although section 302 prescribes no priority of application, a pattern has emerged from the cases. Usually, payments are applied in the following order: current and accrued taxes; hazard insurance; interest on the debt; and principal. Arrearages and FHA mortgage insurance premiums have been inserted in the priority scale in various fashions. So also have the application of sums from casualty insurance recoveries, amounts held in escrow by the mortgagee, and property surpluses.[59] Sometimes, when a court has granted a stay and ordered partial payments, the court has also required the servicemember to make periodic sworn statements of his financial condition either to the court or to the mortgagee.[80] Conditional stay orders occasionally grant a mortgagee the right to apply for an amended stay order if the mortgagor's ability to discharge his debt becomes less impaired.[81] Such an amendment is within the court's power as a matter within its equitable powers and its continuing jurisdiction over the case.

4-5. Anticipatory, Applied for Relief

Section 700

> (1) A person may, at any time during his period of military service or within six months thereafter, apply to a court for relief in respect of any obligation or liability incurred by such person prior to his period of military service or in respect of any tax or assessment whether falling due prior to or during his period of military service. The court, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability or to pay such tax or assessment has not been materially affected by reason of his military service, may grant the following relief:
>
> (a) In the case of an obligation payable under its terms in installments under a contract for the purchase of real estate, or secured by a mortgage or other instrument in the nature of a mortgage upon real estate, a stay of the enforcement of such obligation during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period equal to the period of the remaining life of the installment contract or other instrument plus a period of time equal to the period of military service of the applicant, or any part of such combined period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of the period of military service or from the date of application, as the case may be, in equal installments during such combined period at such rate of interest on the unpaid balance as

is prescribed in such contract, or other instrument evidencing the obligation, for installments paid when due, and subject to such other terms as may be just.

(b) In the case of any other obligation, liability, tax, or assessment, a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application if made after such service, for a period of time equal to the period of military service of the applicant or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid at the date of termination of such period of military service or the date of application, as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such obligation, liability, tax or assessment, if paid when due, and subject to such other terms as may be just.

(2) When any court has granted a stay as provided in this section no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of failure to comply with the terms or conditions of the obligation, liability, tax, or assessment in respect of which such stay was granted. (50 U.S.C. App. § 590.)

a. General. This section is similar to sections 301 and 302. It provides a means by which a person in military service may orderly liquidate obligations and liabilities affected by that service. The essential difference is that section 700 permits the servicemember to initiate the action instead of waiting for the creditor to commence proceedings.[82]

A court may suspend enforcement of all or any portion of any obligation or liability that arose prior to entry on active duty, or any tax or assessment falling due either before or during service. To obtain relief, the servicemember must apply to the court during his military service, or within six months thereafter, and satisfy the court that his ability to meet his obligations are materially affected by his service.

b. Application. This section includes all contracts and mortgages covered by sections 301 and 302 plus any other obligation or liability incurred prior to entry on active duty or any tax or assessment regardless of when the tax or assessment falls due. This section differs from sections 301 and 302 as follows:

(1) The servicemember is permitted to institute the action for a stay of the enforcement of his obligations;

(2) The servicemember may apply for relief even if he is not in default on the obligation;

(3) The stay under this section may be for a longer period of time than under other sections of the Act.

(4) For the purposes of relief, the section is divided into two categories:

(a) obligations incurred for the purchase of real estate or secured by a mortgage or other security in the nature of a mortgage of real estate, and

(b) all other obligations, liabilities, taxes, or assessments.

c. Action in court. To obtain relief under this section, the servicemember is required to apply to the court in accordance with subsection (1). No court, as yet, has granted relief on its own motion under the provisions of this section.

The question of whether or not a servicemember is entitled to a stay where there is no default and no action pending was raised in Application of Marks.[63] The court decided that no action need be pending and the servicemember need not be in default. Additionally, a servicemember is not prohibited from applying for relief after action has been brought or a stay been granted under the provisions of sections 301 or 302.[64]

d. Nature of relief. Once the court is satisfied that the servicemember's ability to meet his obligations is materially affected[86] by his service, it has authority to not only stay the enforcement of the obligation, but also to set up an equitable plan or schedule for him to repay the debts he is unable to handle because of military service.

The stay provisions of this section provide that if the obligation involved is for the purchase of real estate or is secured by real estate, the court may grant a stay to allow the servicemember to suspend all payments while in service. The servicemember may then make up these back payments, plus interest, by spreading them out equally over the remaining life of the contract, plus a period of time equal to his time in service. For all other debts, the time allowable to make up the back payments cannot exceed a period of time equal to his time in service.

An example provides the best explanation of these provisions. Assume that when A enters the service, he owns a mortgaged house with 20 years remaining on the mortgage, and a boat with 5 years of installment payments remaining. While spending two years on active duty, he made reduced payments on both obligations by obtaining a stay under this section. When he is separated from the service, he has 18 more years on his mortgage and is $1400.00 in arrears. He also has three years of payments remaining on his boat and is $800.00 in arrears on this debt. The court may allow the $1400.00 to be spread out for a period of 20 years and the $800.00 for a period of two years. The maximum permissible period for the stay on the mortgage is calculated by adding the 18 years remaining on the mortgage at the time of separation to the two years A spent in the service. As to the installment contract on the boat, A could be permitted a maximum of 2 years to make up the arrears since the court is allowed to grant a stay equal to his term of service.

In addition, the discharged servicemember will be required to resume his regular payments at the same time he is paying the arrears. The stay described in the example is the maximum allowable stay. The court could order less time for repayment, in accordance with its equitable powers.[66]

4-6. Personal Property Repossession Appraisals

Section 303

> Where a proceeding to foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof, has been stayed as provided in this Act, the court may, unless in its opinion an undue hardship would result to the dependents of the person in military service, appoint three disinterested parties to appraise the property and, based upon the report of the appraisers, order such sum, if any, as may be just, paid to the person in military service or his dependent, as the case may be, as a condition of foreclosing the mortgage, resuming possession of the property, or rescinding or terminating the contract. (50 U.S.C. App. § 533.)

a. General. This section is designed to provide supplemental relief for all parties when an installment contract or other obligation for the purchase of personal property has been stayed under other sections of the Act.

b. Application. Section 303 is applicable in cases where a stay has been granted under this Act in any proceeding to "foreclose a mortgage upon or to resume possession of personal property, or to rescind or terminate a contract for the purchase thereof." In such a case, the trial court is empowered to appoint three appraisers to determine the value of the personal property involved. Based on the appraised value, the court may order whatever sum, if any, it believes is representative of the servicemember's equity to be paid to the servicemember or his dependent. This payment may be made a condition precedent to foreclosing the mortgage, terminating the contract, or permitting the vendor to resume possession of the chattel. This section has been effectively employed in the situation where the value of the pledged chattel is "rapidly diminishing."[67]

When applying section 303, the trial court is faced with the task of striking a delicate balance of the equities between (1) the servicemember, in whose favor a ruling previously has been made by way of a stay or proceedings; (2) the dependent of the servicemember, who should not be subjected to undue hardship as a result of losing use of the chattel; and (3) the vendor, who has neither been paid nor has the benefit of the possession of the chattel.

The sole restriction against the court's use of this section is embodied in the clause "unless in its opinion an undue hardship would result to the dependents of the person in the military service." "Undue hardship" is difficult to define. Therefore, the courts have considered it a factual determination that must be made on a case by case basis.[88]

4-7. Termination of Leases by Lessees

Section 304

> (1) The provisions of this section shall apply to any lease covering premises occupied for dwelling, professional, business, agricultural, or similar purposes in any case in which (a) such lease was executed by or on the behalf of a person who, after the execution of such lease, entered military service, and (b) the premises so leased have been occupied for such purposes, or for a combination of such purposes, by such person or by him and his dependents.
>
> (2) Any such lease may be terminated by notice in writing delivered to the lessor (or his grantee) or to the lessor's (or his grantee's) agent by the lessee at any time following the date of the beginning of his period of military service. Delivery of such notice may be accomplished by placing it in an envelope properly stamped and duly addressed to the lessor (or his grantee) or to the lessor's (or his grantee's) agent and depositing the notice in the United States mails. Termination of any such lease providing for monthly payment of rent shall not be effective until thirty days after the first date on which the next rental payment is

due and payable subsequent to the date when such notice is delivered or mailed. In the case of all other leases, termination shall be effected on the last day of the month following the month in which such notice is delivered or mailed and in such case any unpaid rental for a period preceding termination shall be proratably computed and any rental paid in advance for a period succeeding termination shall be refunded by the lessor (or his assignee). Upon application by the lessor to the appropriate court prior to the termination period provided for in the notice, any relief granted in this subsection shall be subject to such modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require.

(3) Any person who shall knowingly seize, hold, or detail the personal effects, clothing, furniture, or other property of any person who has lawfully terminated a lease covered by this section, or in any manner interfere with the removal of such property from the premises covered by such lease, for the purpose of subjecting or attempting to subject any of such property to a claim for rent accruing subsequent to the date of termination of such lease, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (50 U.S.C. App. § 534.)

a. General. This section of the Act differs from section 300 dealing with eviction in that it provides a method by which the servicemember-lessee, rather than the lessor, may terminate a lease. Its scope is not limited, as is section 300, by either the amount of the agreed rent or the nature of the premises. Section 304 is, however, limited in application to premises occupied prior to entry into military service. In further contrast to section 300, this section does not require that the lessee's ability to perform be materially affected by his military service.

b. Application. The termination provisions of this section apply to any lease covering premises occupied for dwelling, professional, business, agricultural or similar purposes, if the following two conditions are met:

(1) The lease was executed by a person who, after the execution of such lease, entered military service;[70] and

(2) The leased premises have been occupied for such purposes by the servicemember or his dependents.

c. Procedural requirements. The lessee must deliver written notice of termination to the lessor at any time after entry on active duty or receipt of orders as contemplated by section 106.[71] Delivery may be made by posting a properly addressed and stamped envelope in the U.S. mails. Oral notice to the lessor is insufficient.[72]

The effective date of the termination is determined by the method of rental payment under the lease. In the case of a month to month rental, the termination becomes effective 30 days after the first date on which the next rental payment is due subsequent to the date when the notice of termination is delivered. For example, if the rent is due on the first day of each month, and notice is mailed on 1 August, then the "next rental payment is due and payable" on 1 September. Thirty days after that date would be 1 October, the effective date of termination.

All other leases will be terminated on the last day of the month following the month in which proper notice is delivered. For example, if the lease requires a weekly or yearly rental and proper notice of termination is given on 20 July, the effective date of termination would be 31 August.

d. Return of security or prepaid rent. The servicemember is required to pay rent for only those months before the lease is terminated.[73] If the servicemember has paid rent in advance, then section 304 requires the lessor to prorate and refund the unearned portion. If a deposit for security was required by the lessor, then, upon termination of the lease, the lessee is entitled to the deposit.[74]

e. Lessor's rights. Section 304 also extends certain rights to the lessor whose lease is terminated under these provisions. The lessor may, during the period from his receipt of notice to the effective date of termination, petition the appropriate court for relief from the lease termination. The court may then make such "modifications or restrictions as in the opinion of the court justice and equity may in the circumstances require."[75] If the lessor seizes or attempts to seize the personal property of the lessee for the purpose of subjecting the property to a claim for rent accruing after the effective date of termination, however, he may commit a misdemeanor under subsection (3).[76]

4-8. Rights of Life Insurance Assignees; Enforcement of Storage Liens

Section 305

> (1) Where any life insurance policy on the life of a person in military service has been assigned prior to such person's period of military service to secure the payment of any obligation of such person, no assignee of any policy (except the insurer in connection with a policy loan) shall, during the period of military service of the insured or within one year thereafter, except upon the consent in writing of the insured made during such period or when the premiums thereon are due and unpaid or upon the death of the insured, exercise any right or option by virtue of such assignment unless upon leave of court granted upon an application made therefor by such assignee. The court may thereupon refuse to grant such leave unless in the opinion of the court the ability of the obligor to comply with the terms of the obligation is not materially affected by reason of his military service. For the purpose of this subsection premiums which are guaranteed under the provisions of article IV of this Act shall not be deemed to be due and unpaid.
>
> (2) No person shall exercise any right to foreclose or enforce any lien for storage of household goods, furniture, or personal effects of a person in military service during such person's

period of military service and for 3 months thereafter, except upon an order previously granted by a court upon application therefor and a return thereto made and approved by the court. In such proceeding the court may, after hearing, in its discretion, on its own motion, and shall, on application to it by such person in military service or some person on his behalf, unless in the opinion of the court the ability of the defendant to pay the storage charges due is not materially affected by reason of his military service--

(a) stay the proceedings as provided in this Act, or

(b) make such other disposition of the case as may be equitable to conserve the interest of all parties. The enactment of the provisions of this subsection shall not be construed in any way as affecting or as limiting the scope of section 302 of this Act.

(3) Any person who shall knowingly take any action contrary to the provisions of this section, or attempts so to do, shall be guilty of a misdemeanor and shall be punished by imprisonment not to exceed one year or by fine not to exceed $1,000, or both. (50 U.S.C. App. § 535.)

a. Life insurance. Subsection (1) is designed to govern the situation where, prior to entry into military service, an insured has assigned his life insurance policy as collateral for a loan. After entry on active duty, this section prohibits the assignee from exercising any right or option under the assignment of the policy except in the following circumstances:

(1) Where written consent is made by the insured after entry into military service; or

(2) When the premiums on the policy due are unpaid;[77] or

(3) When the insured dies; or

(4) Upon leave of court granted upon an application made therefor by the assignee.

The purpose of this section is to require creditors holding life insurance policies as collateral to obtain court approval before attaching the proceeds of the policy.

_b_. _Storage liens_. Subsection (2) pertains to the foreclosure of liens for storage of household goods or other personal property of military personnel, whether the goods were stored prior to entry upon active duty or not. Such foreclosure is prohibited during the period of military service and for three months thereafter, unless the lienholder obtains an order from a court and a return is made and approved by the court.[78]

Congress included this section to ensure judicial safeguards in all foreclosure proceedings and to avoid the possibility that summary foreclosures allowed by some states would be held without the protections of section 302.[79]

4-9. Extension of Benefits to Dependents

Section 306

> Dependents of a person in military service shall be entitled to the benefits accorded to persons in military service under the provisions of this article upon application to a court therefor, unless in the opinion of the court the ability of such dependents to comply with the terms of the obligation, contract, lease, or bailment has not been materially impaired by reason of the military service of the person upon whom the applicants are dependent. (50 U.S.C. App. § 536.)

Under the terms of this section, dependents of military personnel may apply to a court for the benefits of all the sections under Article III.[80] If the court finds that the dependent's ability to comply with the terms of a contract or other obligation is materially affected by the military service of the person upon whom he or she is dependent, then the court is authorized to grant the dependent at least the same degree of relief to which the servicemember would be entitled.[81]

Congress added this section in 1942 to avoid situations in which dependents suffered as a result of the servicemember's period of service. It applies the situations such as the foreclosure of a mortgage on the home of a widowed mother, entirely dependent upon her soldier son, because she herself was not a "person in the military service."[82]

Since the Act does not define "dependent," the courts have treated this as a question of fact to be determined in each individual case. The courts have determined whether the individual invoking the Act is dependent upon a servicemember for support and maintenance. One court held that this section does not protect a business partner.[83]

FOOTNOTES

1. The provisions of this section are entirely different from, and not to be confused with, the provisions of section 302, which deals with mortgages, trust deeds, etc. Union Labor Life Ins. Co. v. Wendeborn, 19 N.J. Misc. 496, 21 A.2d 317 (1941).

2. A violation of this section will also support an action for damages for wrongful eviction, including an award of punitive damages. Spampinato v. M. Breger & Co., 226 F.2d 742 (2d Cir. 1955), cert denied, 350 U.S. 973, reh'g denied, 350 U.S. 1009 (1956); Prather v. Clover Spinning Mills, 215 S.C. 103, 54 S.E.2d 529 (1949).

3. Pub. L. No. 89-358, § 10, 80 Stat. 28 (1966), raised the rent ceiling amount from $80 to $150 per month.

4. "Eviction" means "a dispossession of a tenant by a landlord." "Distress" is "the taking of another's personal property out of his possession either for holding or for sale in order to obtain satisfaction of a part due rent claim." Lesher v. Louisville Gas & Electric Co., 49 F. Supp. 88 (W.D. Ky. 1943); Arkless v. Kilstein, 61 F. Supp. 886 (E.D. Pa. 1944).

5. For a case holding that the tenant may waive his rights to an action for wrongful distress under this section, see State ex. rel. Myers v. Kodge, 129 W. Va. 820, 42 S.E.2d 23 (1947).

6. The persons entitled to protection under this section are those in the armed service, or their dependents, who have an obligation to pay rent for the leased premises. Pfeiffer v. McGarvey, 61 F. Supp. 570 (E.D. Pa. 1945). See Balconi v. Dvascas, 133 Misc.2d 685, 507 N.Y.S.2d 788 (Rochester City Ct. 1986) (dependents include child and ex-wife who are financially dependent on servicemember).

7. Balconi v. Drascas, 133 Misc.2d 686, 507 N.Y.S.2d 788 (Rochester City Ct. 1986).

8. See Clinton Cotton Mills v. United States, 164 F.2d 173 (4th Cir. 1947); Lesher v. Louisville Gas & Electric Co., 49 F. Supp. 88; Arkless v. Kilstein, 61 F. Supp. 886.

9. Clinton Cotton Mills v. United States, 164 F.2d 173.

10. It is not necessary to file a petition for authority to commence the eviction proceeding; only "leave of court" is necessary before any actual eviction is proper. Eviction proceedings could be commenced against a servicemember without filing a petition for authority to commence the proceeding. Cox v. McGregor, 330 Mich. 260, 47 N.W.2d 87 (1951). See generally 24 A.L.R.2d 1067 (1951).

11. See London v. O'Connell, 20 Misc.2d 168, 192 N.Y.S.2d 594 (N.Y. City Mun. Ct. 1959); Bronson v. Chamberlain, 53 N.Y.S.2d 172 (Syracuse Mun. Ct. 1945).

12. See Scanlan v. Garrick, 326 Ill. App. 461, 61 N.E.2d 773 (1945); Nassau Savings & Loan Ass'n v. Ormond, 179 Misc. 447, 39 N.Y.S.2d 92 (Sup. Ct. 1942); Prather v. Clover Spinning Mills, 215 S.C. 103, 54 S.E.2d 529.

13. See para. 4.4e, infra, for a full discussion of "material effect." For examples in which courts denied relief under this section because the petitioner failed to show that his ability to pay was materially affected by reason of his military service, see Arkless v. Kilstein, 61 F. Supp. 886; and Harvey v. Home Owners' Loan Corp., 189 Misc. 73, 67 N.Y.S.2d 586 (Sup. Ct. 1946).

14. Clinton Cotton Mills v. United States, 164 F.2d 173.

15. Daily v. Kelly, 304 Ky. 229, 200 S.E.2d 114 (1947).

16. See, e.g., Academy St. Corp. v. Calderson, 38 Misc.2d 873, 238 N.Y.S.2d 853 (N.Y. City Ct. 1963); Railroad Federal Savings & Loan Ass'n v. Morrison, 179 Misc. 893, 40 N.Y.S.2d 319 (Sup. Ct. 1943).

17. Jonda Realty Corp. v. Marabotto, 178 Misc. 393, 34 N.Y.S.2d 301 (Sup. Ct. 1942).

18. Army Reg. 37-104-3, Financial Administration: Military Pay and Allowances Procedures, para. 55-5 (4 Apr. 1988).

19. Jim's Trailer Sales, Inc. v. Shutok, 153 F. Supp. 274 (W.D. Pa. 1957).

20. Hampton v. Commercial Credit Corp., 199 Mont. 476, 176 P.2d 270 (1946).

21. SSCRA § 107. See also Hansen v. Ryan, 186 S.W.2d 595 (Mo. 1945).

22. Jim's Trailer Sales, Inc. v. Shutek, 153 F. Supp. 274 (W.D. Pa. 1957); accord, Charles H. Jenkins v. Lewis, 259 N.C. 86, 130 S.E.2d 49 (1963).

23. Cox v. McGregor, 330 Mich. 260, 47 N.W.2d 87 (1951); Ryan v. Bloom, 120 Mont. 443, 186 P.2d 879 (1947), cert. denied, 333 U.S. 874 (1948).

24. This section does not provide the servicemember-debtor any rights until after the vendor has sought to enforce the contract, either by repossession or through court action. Application of Roosin, 30 N.Y.S.2d 9 (Sup. Ct. 1941).

25. See paragraph 4.3d, infra.

26. See Luke v. Mercantile Acceptance Corp. of Cal. 111 Cal. App.2d 431, 244 P.2d 764 (1952).

27. Universal C.I.T. Credit Corp v. Ganter, 182 Misc. 833, 44 N.Y.S.2d 908, 910 (Sup. Ct. 1943).

28. Note that the servicemember's interest was protected by the plaintiff's undertaking in replevin. Furthermore, the effect of this holding was to approve the action of the sheriff as an officer of the court, and not to allow the creditor to repossess without court action.

29. S. & C. Motors v. Carden, 223 Ark. 164, S.W.2d 627 (1954).

30. *See* Hanson v. Crown Toyota Motors, Inc., 572 P.2d 380 (Utah 1977); Pacific Finance Corp. v. Gilkerson, 217 S.W.2d 440 (Tex. Civ. App. 1949); Application of Aber, 180 Misc. 736, 40 N.Y.S.2d 48 (Sup. Ct. 1942); Hampton v. Commercial Credit Corp., 119 Mont. 476, 176 P.2d 270 (1946).

31. Hampton v. Commercial Credit Corp., 119 Mont. 476, 176 P.2d 270. *See also* Bowling v. Stark, 268 So.2d 201 (Fla. App. 1972).

32. The court may grant the stay on its own motion, or on motion by the servicemember or someone on his behalf.

33. SSCRA § 204, and SSCRA § 101(2).

34. Nassau Savings & Loan Assoc. v. Ormond, 179 Misc. 447, 39 N.Y.S.2d 92.

35. The grammatical construction of this section indicates that the "material effect" clause in section 301(3) modifies the first and second types of relief only. The cases which have granted other equitable relief, however, have also required some showing that the servicemember's ability to comply is or has been materially affected by his military service. *See* Boone v. Lightner, 319 U.S. 561, *reh'g denied*, 320 U.S. 809 (1943); Fed. Nat. Mortgage Ass'n. v. Denziel, 136 F. Supp. 859 (E.D. Mich. 1956); New York Life Ins. Co. v. Litke, 180 Misc. 297, 41 N.Y.S.2d 526 (Sup. Ct. 1943) *modified* on other grounds, 181 Misc. 32, 45 N.Y.S.2d 576 (Sup. Ct. 1943). *But see* Hanson v. Crown Toyota Motors, Inc., 572 P.2d 380. (In an action in which damages were sought for wrongful repossession of plaintiff's car, without filing a lawsuit, while he was in military service, plaintiff was not required to prove inability to pay occasioned by his military service.)

36. Associates Discount Corp. v. Armstrong, 33 N.Y.S.2d 36 (Rochester City Ct. 1942).

37. Holtzman's Furniture Store v. Schrapp, 30 So.2d 450 (La. App. 1949).

38. Brown Service Ins. Co. v. King, 247 Ala. 311, 24 So.2d 219 (1945).

39. Harvey v. Home Owners' Loan Corp., 189 Misc. 73, 67 N.Y.S.2d 586 (1946).

40. See Creamer v. Ansoplano, 183 Misc. 716, 52 N.Y.S.2d 862 (Sup. Ct. 1945); Reese v. Bacon, 176 S.W.2d 971 (Tex. Civ. App. 1944).

41. Meyers v. Schmidt, 181 Misc. 589, 46 N.Y.S.2d 420 (Sup. Ct. 1944). See also Tucson Telco Federal Credit Union v. Bowser, 9 Ariz. App. 242, 451 P.2d 322 (1969) (obligation of adult single woman evidenced by note and chattel mortgage executed solely by her, encumbering automobile owned by her, incurred eight months prior to her marriage to a civilian, who one year later was inducted into the Armed Forces, which obligation was paid entirely from earnings from maker until repossession of automobile, was obligation entitled to protection of provisions of sections 300-306 of the Act).

42. SSCRA § 107.

43. Hoffman v. Charlestown Five Cents Sav. Bank, 231 Mass. 324, 121 N.E. 15 (1918).

44. SSCRA § 302(4).

45. Stability Building and Loan Ass'n v. Liebowitz, 132 N.J. Eq. 477, 28 A.2d 653 (1942).

46. Syracuse Savings Bank v. Brown, 181 Misc. 999, 42 N.Y.S.2d 156 (Sup. Ct. 1943).

47. Morse v. Stober, 233 Mass. 223, 123 N.E. 780 (1919); Hoffman v. Charlestown Five Cent Savings Bank, 231 Mass. 324, 121 N.E. 15 (1918).

48. Fourth National Bank in Wichita v. Hill, 181 Kan. 683, 314 P.2d 312 (1957); Guleserian v. Pilgrim Trust Co., 331 Mass. 431, 120 N.E.2d 193 (1954); Twitchell v. Home Owners' Loan Corporation, 59 Ariz. 22, 122 P.2d 210 (1942).

49. E.g., Lansing v. Kremmelbein, 33 Misc.2d 899, 227 N.Y.S.2d 138 (Sup. Ct. 1962); Godwin v. Gerling, 362 Mo. 19, 239 S.W.2d 352 (1951).

50. Franklin Soc. for Home-Building & Savings v. Flavin, 265 App. Div. 720, 40 N.Y.S.2d 582 (1943), aff'd, 291 N.Y. 530, 50 N.E.2d 653, cert. denied, 320 U.S. 786 (1944).

51. Hunt v. Jacobson, 178 Misc. 201, 204, 33 N.Y.S.2d 661, 664 (Sup. Ct. 1942).

52. The Act does not state which party has the burden of proof. The Supreme Court in Boone v. Lightner, 319 U.S 561 (1943) ruled that the burden of going forward would be determined by the trial courts. In some cases, the servicemember was required to prove material effect, e.g., Queens County Sav. Bank v. Thaler, 181 Misc. 229, 44 N.Y.S.2d 4 (Sup. Ct. 1943); whereas in other cases the one bringing the action against a servicemember had the burden of proving lack of material effect, e.g., Meyers v. Schmidt, 181 Misc. 589, 46 N.Y.S.2d 420. In any event, the servicemember should be prepared to go forward with sufficient evidence to support his position.

53. "While promptness in the payment of a bill may indicate ability to pay, the failure to be prompt in the payment of bills does not necessarily indicate inability to pay." Meyers v. Schmidt, 181 Misc. at 592, 46 N.Y.S.2d at 423.

54. Hempstead Bank v. Collier, 289 N.Y.S.2d 797 (Sup. Ct. 1967).

55. E.g., Brown Service Ins. Co. v. King, 247 Ala. 311, 24 So.2d 219.

56. The case should be examined, in the event of a default judgment, to determine whether there was either a false affidavit or a failure to file an affidavit as is required by section 200. Such a defect may affect the validity of the judgment obtained. Wilkin v. Shell Oil Co., 197 F.2d 42 (10th Cir. 1951); cert. denied, 344 U.S. 854; reh'g denied, 344 U.S. 888.

57. See SSCRA § 205; e.g., Illinois National Bank of Springfield v. Gwinn, 348 Ill. App. 9, 107 N.E.2d 764 (1952); Radich v. Bloomberg, 140 N.J. Eq. 289, 54 A.2d 249 (1947); Flagg v. Sun Investment & Loan Corp., 373 P.2d 226 (Okla. 1962).

58. E.g., Federal National Mortgage Association v. Deziel, 136 F. Supp. 859.

59. See Brown Service Ins. Co. v. King, 247 Ala. 311, 24 So.2d 219; Railroad Federal Savings & Loan Ass'n v. Morrison, 179 Misc. 893, 40 N.Y.S.2d 319 (Sup. Ct. 1943); Nassau Savings & Loan Ass'n v. Ormond, 179 Misc. 447, 39 N.Y.S.2d 92.

60. New York Life Ins. Co. v. Litke, 180 Misc. 297, 41 N.Y.S.2d 526, modified on other grounds, 181 Misc. 32, 45 N.Y.S.2d 576.

61. E.g., O'Leary v. Horgan, 179 Misc. 518, 39 N.Y.S.2d 555 (1943).

62. Kindy v. Koenke, 216 F.2d 907 (8th Cir. 1954).

63. 181 Misc. 497, 46 N.Y.S.2d 755 (Sup. Ct. 1944).

64. New York Life Ins. Co. v. Litke, 180 Misc. 297, 41 N.Y.S.2d 526, modified on other grounds, 181 Misc. 32, 45 N.Y.S.2d 576.

65. See para. 4.43., supra, for a discussion of material affect.

66. E.g., Application of Pickard, 187 Misc. 400, 60 N.Y.S.2d 506 (1946); Morris Plan Indus. Bank of N.Y. v. Petluck, 187 Misc. 87, 60 N.Y.S.2d 162 (1946).

67. See S & C Motors v. Carden, 223 Ark. 164, 264 S.W.2d 627 (1954); and Associates Discount Corp. v. Armstrong, 33 N.Y.S.2d 36 (Rochester City, Ct. 1942).

68. Commercial Securities Co. v. Kavanaugh, 13 So.2d 533 (La. App., 1943). This case also contains an excellent discussion of the reasons for the 1942 amendment to this section. For two cases applying this section prior to the 1942 amendment, see Price v. Phillips, 12 So.2d 59 (La. App. 1942); National Bond & Investment Co. v. Christner, 24 Westmoreland County, L.J. (C.P. 1942).

69. This is emphasized because most servicemembers have the mistaken belief that this section applies to leases entered into after entry on active duty.

70. In Erlich v. Landman, 179 Misc. 972, 40 N.Y.S.2d 743 (Sup. Ct.), appeal denied, 266 App. Div. 941, 46 N.Y.S.2d 219 (Sup. Ct. 1943) (the fact that the lessee's son, for whom the lessee leased the premises, went into the Army, did not entitle lessee to relief under this section).

71. SSCRA § 106; Ostrowski v. Barzynski, 24 Erie County L.J. 221, 45 Pa. D. & C. 452 (C.P. 1942).

72. SSCRA § 106; Ostrowski v. Barzynski, 24 Erie County L.J. 221, 45 Pa. D. & C. 452 (C.P. 1942).

73. J.C.H. Service Stations, Inc. v. Patrikes, 181 Misc. 401, 46 N.Y.S.2d 228 (N.Y. City Ct. 1944).

74. Patrikes v. J.C.H. Service Stations, Inc., 180 Misc. 917, 41 N.Y.S.2d 158 (N.Y. City Ct.), aff'd, 180 Misc. 927, 46 N.Y.S.2d 233 (Sup. Ct. 1943).

75. Bal Harbour Tower, Inc. v. Keller, 227 So.2d 219 (Fla. App. 1969).

76. Personal property has been defined as including personal effects, clothing, or furniture and was extended to include a money deposit. Patrikes v. J.C.H. Service Stations, Inc., 180 Misc. 917, 41 N.Y.S.2d 158 (N.Y. City Ct.), aff'd, 180 Misc. 927, 46 N.Y.S.2d 233.

77. Under the express language of this section, premiums that are guaranteed under the provisions of Article IV of this Act shall not be deemed to be due and unpaid.

78. See para. 4.3c, supra, for a discussion of court order and a return thereto.

79. This section specifically states that it shall not affect or limit the scope of section 302.

80. While section 700 is included in this chapter, the extension of benefits to dependents applies to Article III only.

81. See, e.g., Reid v. Margolis, 181 Misc. 222, 44 N.Y.S.2d 518 (1943); Pfeiffer v. McGarvey, 61 F. Supp. 570 (E.D. Pa. 1945); Tucson Telco Federal Credit Union v. Bowser, 451 P.2d 322 (Ariz. App. 1969).

82. See Great Barrington Savings Bank v. Brown, 239 Mass. 546, 132 N.E. 398 (1921).

83. Patrikes v. J.C.H. Service Stations, Inc., 180 Misc. 917, 42 N.Y.S.2d 158 (N.Y. City Ct.), aff'd 180 Misc. 927, 46 N.Y.S.2d 233 (Sup. Ct.).

Chapter 5

Insurance

5-1. Purpose and Scope

The purpose of this chapter is to discuss Article IV, section 400 through 408, of the Soldiers' and Sailors' Civil Relief Act. These sections provide a means by which a servicemember may have the Veterans' Administration guarantee payment of premiums on certain types of commercial life insurance contracts. Relatively few servicemembers have applied for benefits under these sections, probably because the law merely provides a moratorium on premiums and does not relieve the servicemember from liability for repayment of the premiums.

a. General. These sections are designed to provide a means by which any person entering the armed services may apply for continued protection by commercial life insurance.[1] Upon proper application, a servicemember may have the premiums and interest for certain types of commercial life insurance guaranteed for his period of military service and for two years thereafter.[2]

The Administrator of Veterans' Affair[3] is charged with supervising the implementation of these sections. Section 407 authorizes and directs the Administrator of Veterans' Affairs to promulgate regulations and procedures necessary to implement the provisions of sections 400 through 408. Pursuant to this authority, the administrator has prescribed regulations that may be found in volume 38 of the Code of Federal Regulations, sections 7.20 through 7.34.

b. Application. The provisions of these sections apply to commercial life insurance policies taken out by any person in the military service of the United States[4] whose life is insured under and who is the owner of such policy[5] The policy must be in force on a premium paying basis at the time the servicemember applies for benefits. The servicemember must have taken out the policy and paid one premium not less than 180 days[6] before the date the insured entered military service.[7] Also, the maximum amount of life insurance guaranteed for any one individual is $10,000.[8]

Attorneys should examine policy provisions to determine eligibility. A policy containing a provision that limits or eliminates liability for death arising from or in connection with military service, or any activity that the insured may be called upon to perform in connection with his military service, is not eligible for protection under the Act.[9] A policy that requires the insured servicemember to pay an additional premium because of military service is also outside the purview of the Act.[10]

c. Nature and extent of relief. An individual entitled to the benefits of the Act may request governmental guarantee of premiums by filing Veterans' Administration Form 9-380 with his insurance company and forwarding a copy of the application to the Veterans' Administration.[11] The Veterans' Administration will then determine whether the policy is covered by the sections in Article IV or not.[12] The Veterans' Administration determination is final and is not subject to review by any other official, agency,[13] or court.[14]

Unlike several other sections, such as sections 201 and 301, which require the court to find that the servicemember was materially affected by military service, these sections do not require a specific finding of material effect. Hence, any person in military service could apply for relief in accordance with these sections. Relief may be granted regardless of the impact of military service on the individual's ability to pay the premiums.

Once the Veterans' Administration deems a policy to be covered by Article IV, the policy will not lapse, terminate, or be forfeited because of the servicemember's failure to make premium payments or pay any indebtedness or interest due during this period of military service or for two years after the expiration of such service.[15] During this period, the government does not pay the premiums for the servicemember but simply guarantees that the premiums will be paid at the end of the period.

The insured servicemember must repay the unpaid premiums and interest no later than 2 years after the expiration of his term of military service.[16] If he fails to pay these amounts by the end of this 2 year period, the amount then due is treated by the insurance company as a loan on the policy.[17] This assumes that the policy has a sufficient cash surrender value to cover the amount of the unpaid premiums and interest. If the cash surrender value of the policy is less than the amount owed, the insurance company may terminate the policy and the United States will pay the insurance company the difference between the cash surrender value and the amount of the then outstanding debt.[18] Also, if the policy matures as a result of death or by any other means during the protected period, the insurance company is required to deduct from the amount of the settlement the unpaid premiums and interest that were guaranteed by the Veterans' Administration.[19]

If the United States is required to pay any amount to an insurance company under the provisions of Article IV, the amount paid becomes a debt due the United States by the insured. This amount may be deducted from any other amounts due the insured by the United States.[20] If there is no other sum of money due the insured by the United States, a civil action may be brought to recover the sum due.[21]

5-2. Definitions

Section 400

As used in this article--

(a) The term "policy" shall include any contract of life insurance or policy on a life, endowment, or term plan, including any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association, which does not provide for the payment of any sum less than the face value thereof or for the payment of an additional amount as premiums if the insured engages in the military service of the United States as defined in section 101 of article I of this Act or which does not contain any limitation or restriction upon coverage relating to engagement in or pursuit of certain types of activities which a person might be required to engage in by virtue of his being in such military service, and (1) which is in force on a premium-paying basis at the time of application for benefits hereunder, and (2) which was made and a premium paid thereon before the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942 or not less than one hundred and eighty days before the date the insured entered into the military service. The provisions of this Act shall not be applicable to policies or contracts of life insurance issued under the War Risk Insurance Act, as amended, the World War Veterans Act, as amended, or the National Service Life Insurance Act of 1940, as amended.

(b) The term "premium" shall include the amount specified in the policy as the stipend to be paid by the insured at regular intervals during the period therein stated.

(c) The term "insured" shall include any person in the military service of the United States as defined in section 101, article I, of this Act, whose life is insured under and who is the owner and holder of and has an interest in a policy as above defined.

(d) The term "insurer" shall include any firm, corporation, partnership, or association chartered or authorized to engage in the insurance business and to issue a policy as above defined by the laws of a State of the United States or the United States. (50 U.S.C. App. § 540.)

5-3. Persons Entitled to Benefits

Section 401

The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed $10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of $10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed $10,000, and a policy which affords the best security to the Government shall be given preference. (50 U.S.C. App. § 541.)

5-4. Form of Application

Section 402

Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this article and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy. (50 U.S.C. App. § 542.)

5-5. Lapse of Policies for Nonpayment of Premiums

Section 403

The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to the date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest. (50 U.S.C. App. § 543.)

5-6. Rights and Privileges of Insured

Section 404

No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article. (50 U.S.C. App. § 544.)

5-7. Settlement of Policies During Protection

Section 405

In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy bought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans' Affairs. (50 U.S.C. App. § 545).

5-8. Guaranty of Premiums and Interest

Section 406

Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the

United States or as otherwise authorized by law. Any moneys received as repayment of debts incurred under this article, as originally enacted and as amended, shall be credited to the appropriation for the payment of claims under this article. (50 U.S.C. App. § 546.)

5-9. Regulations; Finality of Determinations

Section 407

The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. (50 U.S.C. App. § 547.)

5-10. Prior Act

Section 408

(1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendment of 1942, of all certificates issued in accordance with such provisions together with all

right to payment hereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions. (50 U.S.C. App. § 548.)

FOOTNOTES

1. The provisions of these sections are not applicable to policies of United States Government Life Insurance and National Service Life Insurance. SSCRA § 400; 38 C.F.R. § 7.21 (1988).

2. SSCRA § 403; 38 C.F.R. § 7.27 (1988).

3. The head of the Veterans' Administration is called the Administrator of Veterans' Affairs. 38 U.S.C. § 210 (1982) (Supp. V, 1987).

4. See SSCRA § 101 for a definition of "person in the military service."

5. SSCRA § 400; 38 C.F.R. § 7.20 (1988).

6. By Act of July 11, 1956, 70 Stat. 528, the minimum number of days a policy is required to be in effect before entry on active duty was increased from 30 to 180 days.

7. SSCRA § 400; 38 C.F.R. § 7.21 (1988).

8. SSCRA § 401; 38 C.F.R. § 7.24 (1988).

9. SSCRA § 400; 38 C.F.R. § 7.21 (1988). This relates only to the primary death benefit. If a provision limits or eliminates some other benefit (e.g., double indemnity), the policy will still qualify. 38 C.F.R. § 7.21(a).

10. SSCRA § 400; 38 C.F.R. § 7.21.

11. 38 C.F.R. § 7.26(b).

12. SSCRA § 403; 38 C.F.R. § 7.26(d).

13. SSCRA § 407.

14. 38 U.S.C. 211(a) (1982).

15. SSCRA § 403, 38 C.F.R. § 7.27.

16. SSCRA § 406; 38 C.F.R. § 7.30.

17. Id.

18. Id.

19. SSCRA § 405; 38 C.F.R. § 7.29(a).

20. SSCRA § 406; 38 C.F.R. § 7.30.

21. Id.

Chapter 6

Taxation

6-1. Purpose and Scope

Congress intended that service personnel be given relief from strict compliance with the rules for the payment of taxes to various tax authorities. Public policy dictates that the servicemember should be spared the loss of his home,[1] the burden of penalties for nonpayment of income taxes,[2] and the requirement to pay a myriad of taxes to jurisdictions where he is situated solely because of his military service.[3] In this chapter, the provisions of sections 500, 513, and 514 of the Act will be discussed.

6-2. Taxes Respecting Personalty, Money, Credits, or Realty; Sale of Property to Enforce Collection; Redemption of Property Sold; Penalty for Nonpayment; Notice of Rights to Beneficiaries of Section

Section 500

> (1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.
>
> (2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason

of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person.

(3) When by law such property may be sold or forfeited to enforce the collection of such tax or assessment, such person in military service shall have the right to redeem or commence an action to redeem such property, at any time not later than six months after the termination of such service, but in no case later than six months after the date when this Act ceases to be in force; but this shall not be taken to shorten any period, now or hereafter provided by the laws of any State or Territory for such redemption.

(4) Whenever any tax or assessment shall not be paid when due, such tax or assessment due and unpaid shall bear interest until paid at the rate of 6 per centum per annum, and no other penalty or interest shall be incurred by reason of such nonpayment. Any lien for such unpaid taxes or assessment shall also include such interest thereon. (50 U.S.C. App. § 560.)

a. General. Section 500 involves the sale of property resulting from tax deficiencies as well as subsequent redemption rights. Taxes include any taxes or assessment, whether special or general, due before or during the period of military service. It does not include income taxes.

b. Property protected. The Act specifically protects certain classes of property:

(1) personalty;

(2) money;

(3) credits, and

(4) real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the

commencement of his period of service and still occupied by his dependents or employees.

c. Realty. Protection of realty under this section has been the subject of court interpretation. Courts have strictly construed the limitation on the use of the property by the servicemember. Where the servicemember never resided on the land, farmed it, raised livestock on it, or leased it to another for agricultural purposes, but merely inspected it periodically for trespassers, a court held that the servicemember was not in "occupation of the land for agricultural purposes" and, therefore, not protected against the sale for nonpayment of taxes.[4]

d. Protection provided.

(1) Sale of property. Sale of the property described above may not be accomplished to enforce the collection of taxes or assessments except with permission of the court and then only when the court determines that the military service does not materially affect the servicemember's ability to pay. One court held that a deed issued in violation of section 500(2) was voidable.[5] Another court held that a grantee under such a void tax deed had no cause of action against a servicemember for improvements the grantee placed on the land in reliance on the deed. The grantee had been notified that a person protected by the Act owned the property.[6]

(2) Right of redemption. In cases where the property may be lawfully sold to satisfy taxes or assessments, section 500(3) gives the servicemember a liberal period of time in which to redeem the property. Whenever protected property is sold or forfeited for the collection of taxes or assessments on the property, the servicemember is granted the right to redeem or commence action to redeem the property. Action must begin not later than six months after termination of military service or a later date, if a greater period for redemption is authorized by the laws of the state or territory. The ability to pay need not be materially affected by military service for section 500(3) to apply. Rights under section 500(3) are absolute rights and are not subject to judicial discretion.

If relief under section 500 is inappropriate, either because more than 6 months have passed since termination of service, or because the land is not one of the limited types listed in section 500, section 205 should be examined for possible relief.[7] Section 205 suspends the time for computing the limitation of actions during the period of service. This includes the period "for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment." Using section 205 in conjunction with section 500, greater relief may be obtained. In Le Maistre v. Leffers,[8] the Supreme Court held that section 205 is not restricted by section 500; rather, they supplement each other.

6-3. Income Taxes; Collection Deferred; Interest; Statute of Limitations

Section 513

> The collection from any person in the military service of any tax on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the collection of such tax by distraint or otherwise shall be suspended for the period of military service of any individual the collection of whose tax is deferred under this section, and for an additional period of nine months beginning with the day following the period of military service. The provisions of this section shall not apply to the income tax on employees imposed by section 1400 of the Federal Insurance Contributions Act. (50 U.S.C. App. § 573.)

a. General. Section 513 defers collection of any income tax, federal or state, on military or nonmilitary income, falling due either before or during military service. A servicemember's ability to pay the tax, however, must be materially impaired by reason of service. Collection of taxes shall be deferred for a period not in excess of 6 months after the termination of military service. No interest or other penalty may accrue for the nonpayment of any tax on which collection was deferred.[9]

b. Restrictions by Internal Revenue Service (IRS). The IRS has directed[10] that, with regard to federal income taxes, a deferment of payment may be granted only when the servicemember makes a proper application and meets the burden of proving not only an inability to pay but that the inability resulted from military service. The IRS specifically limited the application of section 513 to an initial period of service, defined as--

(1) the period of induction;

(2) a period of active duty pursuant to a first enlistment;

(3) the period of service prior to any reenlistment following recall of the taxpayer to active duty from a reserve or National Guard unit;

(4) the first period of a reenlistment following a break in service of 1 year or longer; or

(5) for an officer falling by analogy into one of the above, 2 years.

Attorneys should advise servicemembers seeking relief beyond the limits of the regulation, but within the limits provided by section 513, to first apply administratively to the IRS for an exception.

c. State income tax. Servicemembers seeking relief from state income taxes should apply to the local state tax authority or the state attorney general and cite section 513.

d. Filing. Section 513 grants relief from tax collection but not from filing returns. An extension or postponement of the time for filing may, however, be authorized under other authority. For example, personnel on duty overseas are authorized an automatic extension of two months (or longer if granted permission) for filing federal income tax returns. Personnel on duty in a combat zone are authorized to postpone filing their federal income tax returns for the duration of combat service plus 180 days. Several states provide similar relief for military personnel in filing state income taxes."

e. Nonapplicability of section 205. Under the provisions of section 207 of the Act, the relief granted by section 205, which suspends the statute of limitations of actions during the period of service, does not apply to periods of limitations prescribed by or under the internal revenue laws of the United States.

6-4. Residence for Tax Purposes

Section 514

> (1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, Territory, possession, or political subdivision of any of the foregoing, or by the District of Columbia, such person shall not be deemed to have lost a residence or domicile in any State, Territory, possession, or political subdivision of any of the foregoing, or in the District of Columbia, solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become resident in or a resident of, any other State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, while and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such person by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia, of which such person is not a resident or in which he is not domiciled,

compensation for military or naval service shall not be deemed income for services performed within, or from sources within, such State, Territory, possession, political subdivision, or District, and personal property shall not be deemed to be located or present in or to have a situs for taxation in such State, Territory, possession, or political subdivision, or district. Where the owner of personal property is absent from his residence or domicile solely by reason of compliance with military or naval orders, this section applies with respect to personal property or the use thereof, within any tax jurisdiction other than such place of residence of domicile, regardless of where the owner may be serving in compliance with such orders: Provided, That nothing contained in this section shall prevent taxation by any State, Territory, possession, or political subdivision of any of the foregoing, or the District of Columbia in respect of personal property used in or arising from a trade or business, if it otherwise has jurisdiction. This section shall be effective as of September 8, 1939, except that it shall not require the crediting or refunding of any tax paid prior to October 6, 1942.

(2) When used in this section, (a) the term "personal property" shall include tangible and intangible property (including motor vehicles), and (b) the term "taxation" shall include but not be limited to licenses, fees, or excises imposed in respect to motor vehicles or the use thereof: Provided, That the license, fee, or excise required by the State, Territory, possession, or District of Columbia of which the person is a resident or in which he is domiciled has been paid. (50 U.S.C. App. § 574.)

a. General. Section 514 provides that a servicemember neither loses nor acquires a residence for purposes of taxation with respect to his person, personalty, or income by reason of being absent or present in any tax jurisdiction solely in compliance with military orders. This was intended "to prevent multiple state taxation of the property and income of military personnel serving within various taxing jurisdictions through no choice of their own."[12]

In discussing section 514, the term "state" is intended to include the District of Columbia, possessions, and territories. The term "home state" means the "state of domicile" or the "state of residence," which for the most part have no significant difference in the application of this section.[13] The term "host state" means the state in which the servicemember is stationed or his state of temporary presence[14] when there is no distinction between the two terms. Occasionally, the servicemember may be stationed in one state where the post is near a state boundary and have his quarters in the neighboring state. In such case, the term "state of temporary presence" could refer to both, while "state of station" would refer to the military post.

The constitutionality of this section was upheld by the Supreme Court in the case of Dameron v. Brodhead.[15]

b. Income tax. Unless it is also the home state, the host state may not tax the compensation a servicemember receives "for military and naval service" because this compensation "shall not be deemed income for service performed" in the host state. This is a statutory exception to the general rule that income may be taxed where it is earned as well as where the taxpayer resides.[16]

At least one court has determined that a school board cannot charge nonresident servicemembers tuition for children enrolled in the host state public schools. Although the tuition charge was not an income tax or a personal property tax, its effect was the same. Servicemembers would be double taxed by supporting school systems in their states of domicile as well as in the host state. The court determined that the Act was intended to prevent such a situation. Accordingly, it held that the tuition requirement was invalid under the supremacy clause.[17]

Income derived from off-duty employment, on or off post, is not "compensation for military and naval service" and, therefore, does not have the protection of the Act. This leaves off-duty income vulnerable to the general rule that it may be taxed by the state where it is earned and by the home state. If the state where the off-duty income is earned is other than the host state, such as when the soldier works in a state adjoining his military post, the host state may not tax the income because the servicemember is a nonresident with respect to the host state. The host state may only tax nonresidents on income earned within its boundaries.[18]

Section 514 does not protect income earned by dependents of servicemembers. Thus, this income might be taxed by (1) the home state, (2) the host state, and (3) the state where the income is earned. If the state where the income is earned is other than the host state, as for example, when the duty station is near a state boundary, the only theory upon which the host state could tax is that the dependent acquired a statutory residence in the host state. Attorneys should examine the law of the host state to determine if the dependent, especially the spouse, acquires a residence for tax purposes. Attorneys should determine the length of temporary presence in the host state necessary to qualify as a resident for tax purposes.[19]

Although states may not tax a nonresident servicemember's military income, a number of states take it into account. Kansas has such a scheme that has survived legal challenge. For purposes of calculating the tax bracket of a nonmilitary spouse who earned income in the state, Kansas adds in the servicemember's military income if the couple filed a joint federal return. Although the servicemember's income is not taxed, the spouse's income is thereby taxed at a higher rate. This practice has been upheld by the Tenth Circuit.[20]

In situations where the servicemember, his dependent, or both, are properly subject to taxation by two or more states, the servicemember and his dependents may be eligible for tax credits. Generally, this is a credit against the tax of the home state in the amount of the tax paid to the state where the income was earned. There may be amount limitations or other formulas to determine the amount of the credit. Another form of tax credit occurs when the state in which the income is earned gives the nonresident taxpayer credit for tax on the income paid in the home state. In either case, state statutes are generally worded to prevent the tax credit from being taken twice. Other forms of relief may consist of an exclusion or deduction of the income from the gross income reported to the home state when tax was paid to the state where it was earned, or merely an itemized deduction of the tax paid to the other state.[21]

The authority of the host state to tax the income earned by off-duty personnel or any other persons working or residing on post, regardless of the nature of federal jurisdiction over the post, is contained in the "Buck Act" of 1940.[22] Since employment by a nonappropriated fund activity is not based on military orders and wages are not paid from appropriated funds, there is no authority for regarding the income derived therefrom as "compensation for military and naval service." Income from nonappropriated funds is derived from services rendered within the host state, and falls under the tax authority given the host state in the Buck Act.

c. Real property. Real property is excluded from section 514 since it is generally taxed only by the state in which it is situated. Therefore, it is not affected by one's status, whether a domiciliary or a resident, military or civilian.[23]

d. Tangible nonbusiness personal property. Section 514 states that for purposes of taxation, nonbusiness personal property "shall not be deemed to be located or present in or to have a situs for taxation" in the host state. This section does not, however, extend protection to property owned by the servicemember's dependents. Examples of, and exceptions to, this general rule follow.

(1) Sales and use taxes. In Sullivan v. United States,[24] the Supreme Court held that section 514 does not exempt servicemembers from sales and use taxes imposed by a state other than the state of domicile.

In Sullivan, the Court determined that sales and use taxes are not imposed on the property itself. Rather, a sales tax is an excise imposed upon the sale transaction, and a use tax is "in the nature of an excise upon the privilege of using, storing or consuming property."[25] Since these taxes are not on the property itself, it does not matter where the property is "deemed" to be in a physical or constructive sense.[26] Congressional action in the Buck Act of 1940[27] dealt specifically with sales and use taxes. State authorities were authorized to collect such taxes on land subject to Federal jurisdiction,[28] except for sale or use of property sold by the United States or its instrumentalities through a commissary, a ship store, or the like.[29]

The Supreme Court, in Sullivan, in addition to allowing the sales tax, was reluctant to bar the imposition of the closely related use tax, despite the existence of section 514. Section 514 prohibits host state taxes "with respect to personal property, or the use thereof" and "in respect to motor vehicles or the use thereof." The Court held that Congress intended to limit protection of servicemembers' personal property. Only "annually recurring taxes on property--[including] the familiar ad valorem personal property tax,"[30] are prohibited.

While the Sullivan case makes it clear that a tax on the sales transaction, whether it is called a sales tax or a use tax, may be imposed by the state, there remains the problem of whether a servicemember's property is subject to such a tax each time he moves the property to a new state. Servicemembers should retain evidence of sales taxes paid on the purchase of major items, if not all items, to avoid further taxation upon relocation. Ordinarily, a credit in the amount of the sales tax paid will be given by the authority imposing the use tax. Because this is strictly a state function, however, which under the Sullivan case is not subject to the protection of section 514, there is no federal assurance that states will grant a credit or exemption for sales taxes paid.

(2) Ad valorem tax.[31] The host state may not impose an ad valorem tax on the nonbusiness personal property of nonresident servicemembers. The right to impose this tax is reserved to the home state. Whether or not the home state has such a tax or enforces it with regard to servicemembers is of no concern to the host state. The Act's prohibition of taxes of this type is absolute.[32] A municipal tax on such property by the political subdivision of the host state where a servicemember lives, while actually assigned for duty in

another subdivision in the same state, likewise may not be imposed.[33]

(a) Constructive placement. Since the law allows the use of the fiction that personal property is not in the place where it is physically located for the purpose of assessing an ad valorem tax, the home state could legally apply a reverse fiction in finding its legal presence for tax purposes in a place where it is not. The application of this fiction would, however, have practical drawbacks, especially where the tax assessor must see the property in order to set a tax.

(b) Property located on federally controlled lands. Regardless of whether the property is owned by the servicemember or his dependent, if the property is located on an installation subject to the exclusive jurisdiction of the Federal government, the state may not impose an ad valorem personal property tax.[34] Exclusive federal jurisdiction means "exclusive legislative jurisdiction" and is applied to situations wherein the Federal Government has received, by whatever method, all the legislative authority of the state. Usually the state has reserved only the right to serve process regarding activities that occurred off the land involved.[35] The fact that the post or installation exists does not automatically mean the installation is subject to exclusive federal jurisdiction. On the contrary, the current trend is away from exclusive jurisdiction to arrangements in which the state will have more authority.[36] Quite often, the type of jurisdiction may vary from one place to another on the same reservation.

(c) Motor vehicles. Section 514(2)(b) provides that the term taxation includes "licenses, fees, or excises in respect to motor vehicles or the use thereof" provided that the license, fee, or excise required by the home state has been paid. In California v. Buzard,[37] the Supreme Court held that even though the law of the home state exempted a resident from payment of a license, fee, or excise when the vehicle was not driven in the home state, the servicemember would have to register and license his vehicle in his home state in order to qualify for the exemption from payment of a license, fee, or excise tax in the host state. If a servicemember does not pay to license and register his car in his home state, the host state may require him to pay in order to register his vehicle in the host state. The servicemember does not, however, have to pay the entire amount assessed if a portion of the license, fee, or excise exceeds the amount necessary to defray the cost of issuance and administration. The Court also held in Buzard that the excessive amount is an ad valorem tax that may not be imposed by the host state upon a servicemember's personal property. This specifically includes motor vehicles.[38]

The motor vehicle, then, may fit into two categories. First, as a piece of tangible non-business property it is exempt from ad valorem taxes regardless of the authority or desire of the host state to tax it. Second, as a machine that moves on the streets and highways of the host state, it is subject to the police power of the host state. A state may exercise its police power to require a servicemember to register a vehicle in its jurisdiction if, and only if, the servicemember has not registered the vehicle in the home state. Where the registration fee or license may properly be exacted by the host state, any portion assessed as revenue need not be paid.

A similar rule applies to the requirement for municipal registration. So long as the requirements of the home state are met, the political subdivision has no greater right than the host state to impose its own requirements. A servicemember need not, however, pay a similar tax or fee to the state of domicile in order to avoid municipal revenue-raising taxes in the host state.[39] Nonresident servicemembers are exempt from paying revenue-raising taxes regardless of whether they paid similar taxes in their state of domicile.[40]

(d) Mobile homes. If the host state treats a mobile home as tangible nonbusiness personal property, the mobile home has the same protection as a motor vehicle or any other such property with regard to ad valorem taxes imposed by the host state.[41] If the law of the host state also classifies the mobile home as a motor vehicle, registration with its accompanying license, fee, or excise may be imposed if the servicemember has not complied with the registration requirements of his home state. The same restrictions prohibiting the state from imposing an ad valorem tax in the form of a license, fee, or excise also apply.

By making certain modifications to a mobile home, such as removing wheels or installing plumbing and electrical connections, an owner may make the mobile home relatively affixed to the land. In some states, the mobile home may then be treated as a piece of real property. In such a case, it would have no protection under section 514.[42]

e. Intangible non-business personal property. This category includes stocks, bonds, and bank deposits. Subject to taxation are the income derived from this property and the value of the property itself.

(1) Income. Traditionally, the owner's legal domicile has taxed income from intangible property.[43] In this regard, the authority to impose an income tax on intangibles is independent of the authority to impose an ad valorem tax on intangibles.[44]

(2) Ad valorem tax. Intangibles have as their taxable situs the servicemember's domicile.[45] While generally not the practice, there appears to be no legal obstacle to imposition of such a tax on dependents' intangible nonbusiness property by virtue of their acquired residence.[46]

(3) Transfer taxes. No court has addressed relief from payment of state or local taxes on the transfer of securities, but it is doubtful that Congress intended to preclude this type of tax. This conclusion is supported by the rule in the Sullivan case.[47]

f. Motor vehicle operator permits. The rule in Buzard[48] applies here as well as in the licensing of the vehicle itself. Generally, if a servicemember has an operator's permit from his home state, he need not apply for a permit in the host state. The Act does not, however, make the servicemember immune from the police power of the host state. In exercising its police power, the host state may properly require a servicemember to take a driving examination but it may not exact a fee for this.[49] The fee, however, could be required when the servicemember does not have a permit from his home state.

g. Business property. Whether tangible or intangible, owned by the servicemember or his dependent, section 514 specifically excludes property used in a business or trade from protection under the Act. Therefore, the value and income derived from business property may properly be taxed in the state where the business or trade is conducted. The host state may also exact revenue producing licenses, fees, and excises. An automobile used by a dependent to drive to and from work, however, should not be considered business property.

Included in this category is the income derived from the rental of real property which, for example, was purchased at the last duty station and rented out in lieu of selling it upon reassignment. If the home is located in a state other than the home state, the servicemember should investigate whether or not the home state treats this income as taxable.[50]

FOOTNOTES

1. H.R. Rep. No. 3030, 76th Cong., 2d Sess. 9 (1940) (discussing the intent of § 500).

2. SSCRA § 513.

3. H.R. Rep. No. 2198, 77th Cong., 2d Sess. 6 (1942) (discussing the intent of § 514).

4. Day v. Jones, 112 Utah 286, 187 P.2d 181 (1947).

5. Moorman v. Thomas, 199 So. 2d 719 (1967).

6. *See* Day v. Jones, 112 Utah 286, 187 P.2d 181 (1947).

7. For a full discussion of § 205, *see* para. 3.10, *supra*. Le Maistre v. Leffers, 333 U.S. 1 (1948).

8. Le Maistre v. Leffers, 333 U.S. 1 (1948). *See also* Hedrick v. Bigby, 228 Ark. 40, 305 S.W.2d 674 (1957).

9. Hogg v. Allen, 105 F. Supp. 12 (D.C. Ga. 1952), *rev'd in part on other grounds*, 215 F.2d 640 (5th Cir. 1954).

10. Revenue Procedure 57-25, 1957-2 Cum. Bull. 1092. Deferment of the Collection of Income Tax Assessments Made Against Persons Who Are Currently in the Armed Forces of the United States.

Section 1. Purpose

The purpose of this Revenue Procedure is to prescribe policy and procedure for the deferment of the collection of income tax assessments made against persons currently in the Armed Forces of the United States.

Section 2. Definition

The term "initial period of service" as used in this Revenue Procedure means the period of active duty for which a taxpayer is inducted into the military service under any selective service act;

the period of active duty under the first enlistment of a taxpayer in the armed service; or the period of service, prior to any reenlistment, following recall of the taxpayer to active duty from an inactive reserve or National Guard unit or the first period of reenlistment, for a taxpayer who has been out of the service for one year or more. In the case of an officer, the initial period of service will be limited to the first two years following his entry into the service under one of the above-mentioned occurrences.

Section 3. Background

Section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940, U.S.C. App. 573, incorporated into the Selective Service Act of 1948 and continued in effect by the Universal Military Training and Service Act of 1951, 50 U.S.C. App. 451, provides that the collection of any income tax from persons serving in the military services of the United States may be postponed if such person's ability to pay is materially impaired by reason of such service. The deferment, if granted, is limited to the period of military service and six months following the day such military service ends. If collection is deferred, the statutory period for the assessment and collection of tax is suspended for the period of military service and nine months following the day such military service ends.

Section 4. Policy

.01 Deferments of the collection of income tax assessments, outstanding against members of the Armed Forces, will not be granted except from the written request of the taxpayer, supported by satisfactory evidence that his ability to pay his account has been materially impaired due to his military service. In order to be granted a deferment, the taxpayer must show that he is serving an initial period of service, as defined, and that because of this service his ability to pay his Federal income tax has been materially impaired.

.02 Deferments will be limited to the taxpayer's initial period of service, as defined herein, and six months following the day such service ends. Immediately upon the final day of the sixth month following the end of the initial period of service, the deferred account will be moved into a collectible status and collection enforced in the same manner as any outstanding account. All rights and privileges consistent with the internal revenue laws and regulations will still be available to the taxpayer.

.03 Deferments will not be granted under Section 513 of the Soldiers' and Sailors' Civil Relief Act, supra, as continued in effect, except as specifically prescribed herein.

Section 5. Collection of Interest or Penalty on Deferred Military Accounts.

Section 513 of the Soldiers' and Sailors' Civil Relief Act of 1940, supra, as continued in effect, provides the following with respect to the collection of interest or penalty, "No interest on any amount of tax, collection of which is deferred for any period under this section, and no penalty for nonpayment of such account during such period, shall accrue for such period of deferment by reason of such nonpayment."

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11. See generally Office of The Judge Advocate General, U.S. Dep't of Air Force, All States Income Tax Guide. This publication is normally published annually.

12. H.R. Rep. No. 2198, 77th Cong., 2d Sess. 6 (1942).

13. The terms "domicile" and "residence" are frequently distinguished, in that domicile is the home, the fixed place of habitation; while residence is a transient place of dwelling. Fisher v. Jordon, 116 F.2d 183, 186 (5th Cir. 1940). However, the Act, by stating that the residence shall not follow the servicemember to his military station solely by virtue of his service, in

effect causes the residence to merge with, or prevents it from being distinguished from, the domicile.

14. The term "state of temporary presence" was used cautiously by the Supreme Court in Dameron v. Brodhead, 345 U.S. 322, 326 (1953), and distinguished from the term "original residence."

15. Dameron v. Brodhead, 345 U.S. at 324.

16. New York ex rel. Cohn v. Graves, 300 U.S. 308 (1937).

17. United States v. Onslow County Bd. of Educ., 728 F.2d 628 (4th Cir. 1984).

18. New York ex rel. Whitney v. Graves, 299 U.S. 366 (1937).

19. See Office of The Judge Advocate General, U.S. Dep't of Air Force, All States Income Tax Guide, supra note 11, for a digest of state law regarding residence and state income taxes.

20. United States v. Kansas, 810 F.2d 935 (10th Cir. 1987).

21. In any case, the current statutes of the states concerned should be examined. If statutes are not available, sources such as the All States Income Tax Guide, supra, note 11, contain the address of each of the state tax authorities.

22. 4 U.S.C. §§ 105-110 (1988). § 106(a) provides:

> No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

23. See para. 6-4d(2)(d), infra, for the treatment of mobile homes as real property.

24. Sullivan v. United States, 395 U.S. 169 (1969).

25. Id. at 177, quoting Connecticut Light & Power Co. v. Walsh, 134 Conn. 295, 307, 57 A.2d 128, 134 (1948).

26. Dameron v. Brodhead, 345 U.S. at 326.

27. 4 U.S.C. §§ 105-110.

28. 4 U.S.C. § 105(a) provides:

> No person shall be relieved from liability for payment of, collection of, or accounting for any sales or use tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, on the ground that the sale or use, with respect to which such tax is levied, occurred in whole or in part within a Federal area; and such State or taxing authority shall have full jurisdiction and power to levy and collect any such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

29. 4 U.S.C. § 107 provides:

> (a) The provisions of sections 105 and 106 of this title shall not be deemed to authorize the levy or collection of any tax on or from the United States or any instrumentality thereof, or the levy or collection of any tax with respect to sale, purchase, storage, or use of tangible personal property sold by the United States or any instrumentality thereof to any authorized purchaser.
>
> (b) A person shall be deemed to be an authorized purchaser under this section only with respect to purchases which he is permitted to make from commissaries, ship's stores, or voluntary

> unincorporated organizations of personnel of any branch of the Armed Forces of the United States, under regulations promulgated by the departmental Secretary having jurisdiction over such branch.

30. Sullivan v. United States, 395 U.S. at 176.

31. The term "ad valorem tax" means a tax or duty upon the value of the article or thing subject to taxation. Arthur v. Johnson, 185 S.C. 324, 327, 194 S.E. 151, 154 (1937).

32. Dameron v. Brodhead, 345 U.S. 322.

33. Woodroffe v. Village of Park Forest, 107 F. Supp. 906 (N.D. Ill. 1952). The court went into great detail to show that the servicemember was still a resident of Pennsylvania and that despite his long period of service in Illinois the exemptions of § 514 still applied.

34. Surplus Trading Co. v. Cook, 281 U.S. 647 (1930). 4 U.S.C. §§ 105-110, does not apply to the ad valorem personal property tax; hence, this case was not overruled by the statute.

35. Administrative and Civil Law Division, The Judge Advocate General's School, Army, Administrative and Civil Law: Handbook, ACIL-ST-296, para. 2-5 (Feb. 1989).

36. Id. at para. 2-6, 2-7.

37. California v. Buzard, 382 U.S. 386 (1966).

38. Id., at 392. The host state attempted to impose an $8.00 standard fee which was held reasonable and a $100.00 fee based upon the value of the vehicle. The latter was determined to be an ad valorem tax.

39. United States v. City of Highwood, 712 F. Supp. 138 (N.D. Ill. 1989) (city could not require nonresident Fort Sheridan soldiers to pay revenue raising fee on vehicles operated within the city).

40. Id.

41. Snapp v. Neal, 382 U.S. 397 (1966) (this is a companion case to and decided on the same day as California v. Buzard, 382 U.S. 386); United States v. Illinois, 525 F.2d 374 (7th Cir. 1975) (mobile home is personal property under Illinois law; county could not impose personal property tax on mobile homes owned by nonresident servicemembers).

42. See para. 6-4.c., supra.

43. Suttles v. Illinois Glass Co., 206 Ga. 849, 59 S.E.2d 394 (1950).

44. New York ex rel. Cohn v. Graves, 300 U.S. 308.

45. Wheeling Steel Corp. v. Fox, 298 U.S. 193 (1936); also see text, para. 6-4d, infra.

46. Curry v. McCanless, 307 U.S. 357 (1939); Graves v. Elliott, 307 U.S. 383 (1939). These cases apply only to death taxes and do not directly address the ad valorem tax itself.

47. Sullivan v. United States, 395 U.S. 169.

48. California v. Buzard, 382 U.S. 386.

49. JAGA 1953/7267, 3 Sep 53, 3 Dig. Ops. JAG SSCRA, § 45.11.

50. Christian v. Strange, 96 Ariz. 106, 392 P.2d 575 (1964).

Chapter 7

Public Lands

7-1. Purpose and Scope

Sections 501-502 of the Act provide the servicemember who is a homestead or desert-land entryman,[1] who has a mining claim, or whose widow has a claim to such land, with the right to obtain waiver of certain requirements as to occupancy and improvement of public lands.[2]

7-2. Rights to Public Lands not Forfeited; Grazing Lands

Section 501

> (1) No right to any lands owned or controlled by the United States initiated or acquired under any laws of the United States, including the mining and mineral leasing laws, by any person prior to entering military service shall during the period of such service be forfeited or prejudiced by reason of his absence from the land or his failure to perform any work or make any improvements thereon or his failure to do any other act required by or under such laws.
>
> (2) If a permittee or licensee under the Act of June 28, 1934 (48 Stat. 1269), enters military service, he may elect to suspend his permit or license for the period of his military service and six months thereafter, and the Secretary of the Interior by regulations shall provide for such suspension of permits and licenses and for the remission, reduction, or refund of grazing fees during such suspension.
>
> (3) This section shall not be construed to control specific requirements contained in this article. (50 U.S.C. App. § 561.)

7-3. Homestead Entries and Settlement Claims; Service as Equivalent to Residence and Cultivation

Section 502

If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed, after such entry or application enters military service, or if any person who has a valid settlement claim enters military service, the Department of the Interior shall construe his military service to be equivalent to residence and cultivation upon the tract entered or settled upon for the period of such service. From the effective date of this Act no contest shall be initiated on the ground of abandonment and no allegation of abandonment shall be sustained against any such person, unless it shall be alleged in the preliminary affidavit or affidavits of contest and proved at the hearing in cases initiated subsequent to the effective date of this Act that the alleged absence from the land was not due to such military service. If such person is discharged on account of wounds received or disability incurred in the line of duty, the term of his enlistment and any period of hospitalization due to such wounds or disability shall be deducted from the required length or residence, without reference to the time of actual service. No patent shall issue to any such person who has not resided upon, improved, and cultivated his homestead for a period of at least one year. (50 U.S.C. App. $ 562.)

7-4. Same; Death or Incapacity During or Resulting from Service as Affecting Rights; Perfection of Rights

Section 503

(1) If any person whose application for a homestead entry has been allowed or who has made application for homestead entry which may thereafter be allowed or who has a valid settlement claim dies while in military service or as a result of such service, his widow, if unmarried, or in the case of her death or marriage, his minor children,

or his or their legal representatives, may proceed forthwith to make final proof upon such entry or upon an application which is allowed after the applicant's death, or upon a homestead application thereafter allowed based on a valid settlement claim, and shall be entitled to receive a patent for such land. The death of such person while in military service or as a result of such service shall be construed to be equivalent to a performance of all requirements as to residence and cultivation upon such homestead or claim, notwithstanding the provisions of section 502 of this Act.

(2) If such person is honorably discharged and because of physical incapacities due to such service is unable to return to the land, he may make final proof without further residence, improvement, or cultivation, at such time and place as the Secretary of the Interior may authorize and receive a patent to the land entered.

(3) The Act of July 28, 1917 (40 Stat. 248), is repealed. (50 U.S.C. App. § 563.)

7-5. Desert-land Entries; Suspension of Requirements

Section 504

(1) No desert-land entry made or held under the desert-land laws prior to the entrance of the entryman or his successor in interest into military service shall be subject to contest or cancellation for failure to make or expend the sum of $1 per acre per year in improvements upon the claim or to effect the reclamation of the claim during the period the entryman or his successor in interest is engaged in military service or during a period of six-months thereafter any period of hospitalization because of wounds or disability incurred in the line of duty. The time within which such entryman or claimant is required to make such expenditures and effect reclamation of the land shall be exclusive of his period of service and the six-months' period and any such period of hospitalization.

(2) If such entryman or claimant is honorably discharged and because of physical incapacities due to such service is unable to accomplish reclamation of, and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

(3) In order to obtain the benefits of this section, such entryman or claimant shall, within six months after the effective date of this Act or within six months after his entrance into military service, file or cause to be filed in the land office of the district in which his claim is situated a notice that he has entered military service and that he desires to hold the desert claim under this section. (50 U.S.C. App. § 564.)

7-6. Mining Claims; Requirements Suspended

Section 505

(1) The provisions of section 2324 of the Revised Statutes of the United States, which require that on each mining claim located after May 10, 1872, and until patent has been issued therefor not less than $100 worth of labor shall be performed or improvements made during each year, shall not apply during the period of his service, or until six months after the termination of such service, or during any period of hospitalization because of wounds or disability incurred in line of duty, to claims or interests in claims which are owned by a person in military service and which have been regularly located and recorded. No mining claim or any interest in a claim which is owned by such a person and which has been regularly located and recorded shall be subject to forfeiture by nonperformance of the annual assessments during the period of such military service, or until six months after the termination of such service or of such hospitalization.

(2) In order to obtain the benefits of this section, the claimant of any mining location shall, before the expiration of the assessment year during which he enters military service, file or cause to be filed in the office where the location notice or certificate is recorded a notice that he has entered such service and that he desires to hold his mining claim under this section. (50 U.S.C. App. § 565.)

7-7. Mineral Permits and Leases; Suspension of Operations and Term of Permits and Leases

Section 506

(1) Any person holding a permit or lease on the public domain under the Federal mineral leasing laws who enters military service may, at his election, suspend all operations under his permit or lease for a period of time equivalent to the period of his military service and six months thereafter. The term of the permit or lease shall not run during such period of suspension nor shall any rentals or royalties be charged against the permit or lease during the period of suspension.

(2) In order to obtain the benefit of this section, such permittee or lessee shall, within six months after the effective date of this Act, or six months after his entrance into military service, notify the Bureau of Land Management by registered mail of his entrance into such service and of his desire to avail himself of the benefits of this section.

(3) This section shall not be construed to supersede the terms of any contract for operation of a permit or lease. (50 U.S.C. App. § 566.)

7-8. Right to Take Action for Perfection, Defense, etc., of Rights as Unaffected; Affidavits and Proofs

Section 507

Nothing in this article shall be construed to limit or affect the right of a person in military service to take any action during his period of service which may be authorized by law or the regulations of the Department of the Interior for the perfection, defense, or further assertion of rights initiated or acquired prior to the date of entering military service. It shall be lawful for any person while in such service to make any affidavit or submit any proof which may be required by law or the practice of regulations of the Bureau of Land Management in connection with the entry, perfection, defense, or further assertion of any rights initiated or acquired prior to entering such service, before the officer in immediate command and holding a commission in the branch of the service in which the person is engaged. Such affidavits shall be as binding in law and with like penalties as if taken before an officer designated by the Secretary of the Interior of a United States land office. The Secretary of the Interior may issue rules and regulations to effectuate the purposes of section 501 to 512, inclusive. (50 U.S.C. App. § 567.)

7-9. Irrigation Rights; Residence Requirements Suspended

Section 508

The Secretary of the Interior is hereby authorized, in his discretion, to suspend as to persons in military service during the period while this Act remains in force and for a period of six months thereafter or during any period of hospitalization because of wounds or disability incurred in line of duty that provision of the act known as the "Reclamation Act" requiring residence upon lands in private ownership or within the neighborhood for securing water for the irrigation of the same, and he is authorized to permit the use of available water thereon upon such terms and conditions as he may deem proper. (50 U.S.C. App. § 568.)

7-10. Distribution of Information Concerning Benefits of Article; Forms

Section 509

The Secretary of the Interior shall issue through appropriate military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article except as to sections 500, 513, and 514 hereof and shall furnish forms to be distributed in like manner to those desiring to make application for its benefits, except as to said sections. (50 U.S.C. App. § 569.)

7-11. Homestead Entrymen Permitted to Leave Entries to Perform Labor

Section 510

(1) During the pendency of any war in which the United States may be engaged while this Act remains in force any homestead entryman shall be entitled to a leave of absence from his entry for the purpose of performing farm labor. The time actually spent in farm labor shall be counted as constructive residence, if within fifteen days after leaving his entry to engage in such labor the entryman files a notice of absence in the land office of the district in which his entry is situated, and if at the expiration of the calendar year the entryman files in that office a written statement under oath and corroborated by two witnesses giving the date or dates when he felt his entry, the date or dates of his return, and the place where and person for whom he was engaged in farm labor during such period or periods of absence.

(2) Nothing in this section shall excuse . . . If such entryman or claimant is honorably discharged and because of physical incapacities due

to such service is unable to accomplish reclamation of, and payment for, the land, he may make proof without further reclamation or payments under such rules as the Secretary of the Interior may prescribe and receive patent for the land entered or claimed.

7-12. Land Rights of Persons Under 21

Section 511

Any person under the age of twenty-one who serves in the military service while this Act remains in force shall be entitled to the same rights under the laws relating to lands owned or controlled by the United States, including the mining and mineral leasing laws, as those over twenty-one now possess under such laws. Any requirements as to establishment of residence within a limited time shall be suspended as to entry by such person until six months after his discharge from military service. Applications for entry may be verified before any officer in the United States or any foreign country authorized to administer oaths by the laws of the State or Territory in which the land may be situated. (50 U.S.C. App. § 571.[3]

7-13. Extension of Benefits to Persons Serving with War Allies of the United States

Section 512

Citizens of the United States who serve with the forces of any nation with which the United States may be allied in the prosecution of any war in which the United States engages while this Act remains in force shall be entitled to the relief and benefits afforded by sections 501 to 511, inclusive, if such service is similar to military service as defined in this Act, and if they are honorably discharged and resume United States citizenship or die in the service of the allied forces or as a result of such service. (50 U.S.C. App. § 572.)

FOOTNOTES

1. An entryman is one who makes an entry onto homestead or desert-land as an initial step to acquiring ownership under the public land laws of the United States. Indian Cove Irr. Dist. v. Prideaux, 25 Idaho 112, 114, 136 P. 618, 620 (1913).

2. S. Rep. No. 2109, 76th Cong., 3d Sess. 3 (1940).

3. This section should be read in conjunction with § 104 on the same subject, a discussion of which is found in para. 2.5, supra.

Index

This index is organized alphabetically by topic and by subtopic within topic. Topics and subtopics are identified by paragraph number.

- Absence without leave, effect of, 2-2e
- Accommodation makers, protection of, 2-4
- Action:
  - Limitation of:
    - By period of military service, 3-10, 6-2d(2), 6-3e
    - Internal revenue laws, 3-10, 3-12, 6-3
  - Stay of:
    - Attachment or garnishment, 3-8
    - During military service, 3-6, 4-5
    - Enforcement of secured obligation, 4-4
    - Eviction or distress, 4-2
    - Execution of order or judgment, 3-8
    - Installment contract, 4-3, 4-5
    - Mortgage foreclosure, 4-4
    - Period and terms of, 3-9
    - Relief of owner, 4-2
    - Relief to sureties, 2-4a
- Active duty, definition of, 2-2
- Ad valorem tax, 6-4d(2), 6-4e(2)
- Administrative remedies, 2-8-2-14
- Affidavits:
  - Absence from homestead not due to military service, 7-3
  - Plaintiff's affidavit, 3-2a, 3-5b
  - Rights acquired in public lands before entering military service, 7-8
- Allies, service with, 2-5, 7-13
- Anticipatory relief, application, 4-5
- Appearance, what constitutes, 3-2a(1)
- Application of provisions of act, 2-3
- Appraisal of property, 4-6
- Assessments, 6-2
- Assigns, period of military service as affecting limitations of action, 3-10
- Attachment, vacation or stay, 3-8, 3-9
- Attorney, appointment of to represent person in military service, 3-2b, 3-4
- Automobile, see Motor vehicle
- Background, historical, 1-1

Bail bond, 2-4c
Bailment, modification, etc., of contract secured, 2-7
Benefits to persons entering military service,
   notice of, 1-6
Bona fide purchaser, 3-5c
Bond, condition before judgment, 3-2c
Breach of installment contract, 4-3
Burden of proof, 3-6c, 6-3b
Business property, 6-4g
Certificate as evidence of military service, 2-9
Civil liabilities, suspension of enforcement, 1-5
Codefendant, 2-4b, 3-9
Confinement, persons in, 2-2e
Constitutionality:
   Of Act, 1-4
   Of section 514, 6-4a
Contracts:
   Dependents' rights to benefits, 4-9
   Installment contracts, 3-7
   Modification of, etc., 2-7
   Rescission or termination of installment contract, 4-3
   Settlement of cases involving stayed proceedings, 4-6
   Transfer to delay enforcement of rights, 2-8
Court, definition of, 2-2, 2-3
Creditors' rights, 2-7
Crimes and offenses, 3-3, 4-2, 4-3f, 4-4, 4-7, 4-8
Cultivation of homestead or claim, 7-3, 7-4, 7-11
Damages, punitive, for wrongful repossession of
   property, 4-3c
Death, 2-2f, 7-4, 7-13
Default judgment, 3-5
Definitions:
   Active duty, 2-2
   Active service, 2-2
   Court, 2-2
   Distress, 4-2a
   Eviction, 4-2a
   Insured, 5-2
   Insurer, 5-2
   Interest, 3-11
   Military service, 2-2
   Period of military service, 2-2
   Person, 2-2
   Persons in the military service, 2-2
   Policy, 5-2
   Premium, 5-2

Dependents:
  Order for payment to, 4-6
  Right to benefits, 4-9
  Taxation of, 6-2, 6-4b, 6-4d(2)(a), (b), 6-4e(1), (2), 6-4g
Desert-Land entry, 7-5
Discharge from military service, 2-2f
Distress during military service, 4-1, 4-2
Divorce, 3-5b
Draftees, rights to benefits, 2-6
Duration of Act, 2-13
Endorsers, protection of, 2-4a
Enlisted Reserve Corps, rights to benefits, 2-6
Eviction during military service, 4-1, 4-2
Execution:
  Period and terms of stay of, 3-9
  Stay of execution of judgment or order, 3-8
Executors or administrators, period of military service as affecting limitation of action, 3-10, 3-12
Garnishment, vacation or stay of, 3-8
General provisions, 2-2--2-7
General relief, 3-1--3-12
Grazing lands, 7-2
Guarantors, protection of, 2-4a
Guardian ad litem, 3-4d
Heirs, period of military service as affecting limitations of action, 3-10, 3-12
Historical background of Act, 1-1
Homestead entry, 7-3, 7-4
Homestead entry, absence from to perform farm labor, 7-11
Income tax:
  Federal, 6-3
  State, 6-3c, 6-4b, 6-4e(1), 6-4g
Indebtedness, application to court for relief, 4-5
Insurance:
  Agreement to modification of policy, 5-1c, 5-4
  Application for protection of policies, 5-1c, 5-3, 5-4
  Application for protection of policies, prior law, 5-10
  Assignment of policy as security, 4-8
  Cash-surrender value:
    Loan on policy exceeding, 5-1c, 5-8
    Withdrawal, 5-6
  Change of beneficiary, 5-6

  Collection of payments from insured, 5-1c, 5-8
  Definitions, 5-2
  Dividends protected, 5-6
  Finding of right to protection of policy, 5-1c, 5-5
  Findings of Administrator of Veterans' Affairs, 5-1c, 5-9
  Forfeiture of protected policy, 5-1c, 5-5
  Form of application, 5-1c, 5-4
  Guaranty:
    Premiums and interest, 5-1c, 5-7
    Unpaid premiums and interest, 5-1c, 5-8
  Interest on premiums:
    Deduction from amount of insurance, 5-1c, 5-7
    Guaranty, 5-1c, 5-8, 7-5
  Lapse of Policy, 5-1c, 5-5
  Loan on policy, premiums and interest not paid, 5-8
  Loan value, withdrawal, 5-6
  Maturity of policy, 5-1c, 5-7
  Maximum protection, 5-1b, 5-7
  Modification of policy, 5-4
  Notice:
    Explanation of right, 5-2
    Right to protection of policy, 5-4
  Payments, collection of from insured, 5-1c, 5-8
  Premiums:
    Deduction on settlement, 5-1c, 5-7
    Guaranty, 5-1b, 5-1c, 5-7, 5-8
    Guaranty of unpaid premiums, 5-1c, 5-10
    Withdrawal of unearned premiums, 5-6
  Report:
    Administrator of Veterans' Affairs to Congress, 5-9
    Insurer:
      Of deductions, 5-7
      To Veterans' Administration, 5-4, 5-7
  Rules of procedure, 5-1a, 5-9
  Settlement, 5-1c, 5-10
  Surrender of certificates by insurer, 5-10
Insured, definition of, 6-2
Insurer, definition of, 5-2
Interest:
  Definition of, 3-11
  Insurance premiums, 5-1a, 5-1c, 5-7, 5-8, 5-10
  Obligation-bearing rate in excess of 6 percent, 3-11
  Stay of enforcement of obligation, 4-5
  Tax or assessment unpaid, 6-2d(2)

Internal revenue laws, limitations
   applicable, 3-12, 6-3e
Introduction, 1-1--1-6
Irrigation rights, 7-9
Judgment:
   Default, 3-5
   Entry of, in absence of affidavit as to military
      service, 3-2
   Opening of, 3-5
   Transfer to delay just enforcement of rights, 2-8
Leases:
   Dependents' rights to benefits, 4-9
   Eviction during military service, 4-1, 4-2
   Mining and mineral, 7-2, 7-6, 7-7, 7-12
   Modification, etc., of contract secured, 2-7
   Payment as condition of resumption of possession, 4-7
   Relief to owner of premises, 4-2e, 4-5
   Rescission or termination of contract, 4-3
   Termination of, 4-7
Leave of court:
   Proceed against codefendants not in military
      service, 3-6a(1)
Limitation of action, see Action, limitation
Material effect, 1-3, 3-4b, 3-6b, 4-2c, 4-3e, 4-4e, 6-4d(1)
Military service:
   Definition of, 2-2
   Prima facie evidence of, 2-9
Mining and mineral leases:
   Age requirements, 7-12
   Claims, 7-6
   Permits and leases, 7-7
   Rights to lands acquired under, 7-2
   Suspension of operation, 7-7
   Suspension of requirements, 7-6
Missing persons, presumption of continuance in
   service, 2-9
   Power of attorney, extension, 2-10
Mobile home, 6-4c, 6-4d(2)(d)
Mortgages, 2-7, 4-4, 4-5, 4-6
Motor vehicle:
   Operator permits, 6-4f
   Taxes, 6-4d(2)(c)

Notice:
  Benefits to persons entering service, 1-6
  Desire of person in military service to hold:
    Desert claim, 7-5
    Mining claim, 7-6
  Desire to suspend operations under mineral leasing laws, 7-7
  Insurance provisions, 5-3
  Interlocutory order amendment, 2-11
  Public-land provisions, 7-10
  Right to protection of insurance policy, 5-1a, 5-5
  Terminate lease, 4-7
Order of court:
  Entry of judgment in absence of affidavit, 3-2
  Interlocutory order, 2-11
Operator permits, motor vehicle, 6-4f
Organization of pamphlet, 1-2
Pay, allotment of, to discharge rent, 4-2f
Penalties:
  Accrual after stay of action barred, 3-7
  Eviction or distress, 4-2
  False affidavit as to military service, 3-3
  Foreclosure, etc., 4-4, 4-8
  Holding property, etc., on termination of lease, 4-7
  Relief from, for nonperformance of obligation, 3-7
  Resumption of possession of property, 4-3
  Stay of proceedings, 4-5
Period of military service as affecting period for bringing of action, 3-12
Period of military service, definition of, 2-2
Permits, operator, motor vehicle, 6-4f
Person, definition of, 2-2
Personal property taxes, see Taxation
Persons in military service, definition of, 2-2
Persons, missing, 2-9
Persons to whom applicable, 2-2
Policy, definition of, 5-2
Power of sale in secured obligation, 4-4
Premium, definition of, 5-2
Probate, 3-2a(1)
Procedure, forms of, 2-3
Proof, burden of, 3-6c
Property tax, see Taxation
Public lands, 7-1--7-13
Purchaser, bona fide, 3-5c

Punitive damages for wrongful repossession of
  property, 4-3c
Purpose and scope of Act, 1-5
Reclamation Act, suspension of residence
  requirements, 7-9
Redemption of property, 6-2d(2)
Rent:
  Allotment of pay to discharge, 4-2f
  Eviction or distress during military service, 4-1, 4-2
Repossession of property, 4-3c
Rescission of installment contract, 4-3
Residence on homestead or claim, 7-3, 7-4, 7-6
Resumption of possession:
  Encumbered property, 4-6
  Property for nonpayment of installation, 4-3
Sales:
  Obligation secured by mortgage, etc., 4-4
  Tax sale, 6-2d(1)
Scope of Act, 1-5
Sections of SSCRA (numbers in parentheses are sections
    of 50 U.S.C. App.):
  1 (501), 1-4
  100 (510), 1-5
  101 (511), 2-2
  102 (512), 2-3
  103 (513), 2-4
  104 (514), 2-5
  105 (515), 1-6
  106 (516), 2-6
  107 (517), 2-7
  200 (520), 3-2, 3-3, 3-4, 3-5
  201 (521), 3-6
  202 (522), 3-7
  203 (523), 3-8
  204 (524), 3-9
  205 (525), 3-10
  206 (526), 3-11
  207 (527), 3-12
  300 (530), 4-2
  301 (531), 4-3
  302 (532), 4-4
  303 (533), 4-6
  304 (534), 4-7
  305 (535), 4-8
  306 (536), 4-9
  400 (540), 5-2

401 (541), 5-3
402 (542), 5-4
403 (543), 5-5
404 (544), 5-6
405 (545), 5-7
406 (546), 5-8
407 (547), 5-9
408 (548), 5-10
500 (560), 6-2
501 (561), 7-2
502 (562), 7-3
503 (563), 7-4
504 (564), 7-5
505 (565), 7-6
506 (566), 7-7
507 (567), 7-8
508 (568), 7-9
509 (569), 7-10
510 (570), 7-11
511 (571), 7-12
512 (572), 7-13
513 (573), 6-3
514 (574), 6-4
600 (580), 2-8
601 (581), 2-9
602 (582), 2-11
603 (583), 2-12
604 (584), 2-13
605 (585), 2-14
700 (590), 4-5
701 (591), 2-10
Secured contract, modification, termination, or cancellation, 2-7
Separability provision, 2-12
Short title of Act, 1-4
Statute of limitations, see Action, limitation
Stay of:
  Execution of judgment, 3-8
  Attachment and garnishments, 3-8
  Proceedings, 3-6
Storage lien, foreclosure, 4-8
Sureties, protection of, 2-4

Suspension of:
   Grazing lands permit, 7-2
   Limitations against collection of income tax, 6-3
   Operations on public lands under mineral
      leasing laws, 7-7
   Residence provisions:
      Public lands, 7-12
      Reclamation Act, 7-9
Taxation:
   Ad valorem, 6-4d(2), 6-4e(2)
   Application for relief, 4-5, 6-3b
   Business property, 6-4g
   General, 6-1--6-4
   Income:
      Federal, 6-3
      State, 6-3c, 6-4b, 6-4e(1), 6-4g
   Personal property:
      Business, 6-4g
      Intangible, 6-4e
      Tangible, 6-4d
   Real property, 6-2b, 6-2c, 6-4c
   Sales tax, 6-4d(1)
   Tax sale, 6-2d(1)
   Use tax, 6-4d(1)
Termination of Act, 2-13
Territorial extent of application of Act, 2-3
Trailer, see Mobile home
Trust deeds, 4-4
Use tax, See Taxation
Vacation of attachment or garnishment, 3-8
Verification of applications for entry on public
   lands , 7-2
Waiver:
   Benefits, 2-4
   Of rights by court-appointed attorney, 3-4
Warrant of attorney to confess judgment, 4-4

MORTGAGE BANKERS ASSOCIATION
OF AMERICA

September 25, 1990

Burton C. Wood

Senior Staff
Vice President and
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The Honorable G.V. "Sonny" Montgomery
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

For your information and use, I am enclosing responses to questions submited to the Mortgage Bankers Association in connection with the September 12 Joint Hearings on the Soldiers' and Sailors' Civil Relief Act.

Please feel free to call upon us for any additional needed information.

Sincerely,

Burton C. Wood

Enclosure

MBA
AT 75
READY FOR THE
FUTURE

1125 Fifteenth Street, N.W. Washington, D.C. 20005

WRITTEN COMMITTEE QUESTIONS AND THEIR RESPONSE:

Joint Hearing
Committees on Veterans' Affairs

September 21, 1990

Questions Submitted by Senator Alan Cranston
to Mortgage Bankers Association of America

We have the following comments to the questions submitted by Senator Cranston:

1. A. Do you believe this kind of program might be offered by your member or participating institutions?

Contrary to other credit areas, the mortgage finance industry relies heavily on a secondary market in which mortgage-backed securities are sold to investors throughout the world. The secondary market has many positive benefits including attracting capital to the mortgage finance industry. Lenders service mortgages for the investors in this market. The servicing rights may be transferred many times throughout the term of the loan. In addition, most mortgages pay-off early when the property is sold. As a result, it would be impossible to develop a reasonable mechanism to permit the lender that advances the payment on behalf of the reservist to the investor to obtain compensation.

Some lenders may be willing to participate in this program on portfolio loans. However, since the early pay-off concern would exist with these loans, it would be feasible only on a case-by-case basis.

B. Does such a program entail any financial advantages to a lender in light of the 6-percent interest-rate cap in section 206 of the Act?

For the reasons stated above, there would be no financial benefit for the lender advancing the funds.

C. What should be the result under the Act if a reservist who takes advantage of this type of offer returns from active duty and retroactively seeks to invoke his or her right to reduced-interest payments for the months that would have been payable during the period of service, but actually are being paid on a delayed basis?

For the few cases for which this might be workable, the reservist should have to make choice at the start of the process and should not be able to change his/her mind without the lender's approval.

2. A. Does your organization allow this type of discrimination by your members or participants?

We are unaware of any discrimination against reservists.

B. What measures has your organization taken or does it intend to take to discourage this practice by your members or participants?

While we do not believe any are necessary with respect to possible discriminatory practices, Mr. Ronnie J. Wynn, MBA's President, has sent a letter to all members encouraging them to work with any reservists to resolve any problems with their mortgages. A copy of this letter is attached.

C. Please look into this matter and submit for the record any information you can provide regarding whether and to what extent reservists are experiencing discrimination in the credit and housing fields and what legislative remedies your organization would support.

Since we are unaware of any problem, it is difficult to propose a remedy.

RESPONSE TO QUESTIONS SUBMITTED BY
HON. G.V MONTGOMERY

QUESTIONS FOR MORTGAGE BANKERS ASSOCIATION

1. It is our understanding that the Department of Veterans Affairs has recently issued underwriting guidelines to you regarding guaranteed home loans that are affected by the Soldiers' and Sailors' Civil Relief Act. Could you explain to the Committee what impact these guidelines have had on the underwriting of these loans?

   VA guidelines require the lender to determine, to the extent possible, whether a reservist has been called to active duty. If a borrower has been called to active duty, the lender has been advised by VA to underwrite the borrower's qualifications using active military pay instead of civilian pay. In this way, veteran borrowers will not face a debt obligation that they cannot afford during the time they are on active duty.

2. Could you expand on the effect of the Soldiers' and Sailors' Civil Relief Act on the different types of financing that you offer your customers' i.e., fixed rate mortgages, adjustable rate mortgages, and home equity lines of credit.

   The impact of the Soldiers' and Sailors' Civil Relief Act should be minimal on the different types of financing that our members offer borrowers. At the present time, interest rates on fixed rate loans are below 10 percent and many borrowers are opting for these mortgages rather than adjustable rate mortgages. It should be added that MBA members do not make many home equity loans. You may wish to contact the American Bankers Association on the impact of this law on home equity loans.

3. If a reservist is unaware of the Soldiers' and Sailors' Civil Relief Act and continues to pay a higher interest rate, could the difference be recouped?

   For loans owned by Fannie Mae and Freddie Mac, a servicer is instructed to apply the 6 percent interest rate reduction retroactively. Payments would be reapplied at the reduced 6 percent interest rate. The service person would have the option of applying the difference toward a future payment(s), principal curtailment, or a refund.

   However, if the reservist is able to continue to make his/her mortgage payments, it would appear that he/she is not materially affected because of his/her military service. The law provides for relief if the service person is materially affected. It appears that the law would not prohibit a lender from denying retroactive application of the reduced interest rate. Lenders would probably handle the situation on a case-by-case basis.

4. Under what circumstances would you petition a court to reinstate a higher mortgage interest rate?

   A lender may petition a court to reinstate a higher mortgage interest rate when it is apparent that the service person is not materially affected by reason of his/her military service.

5. Will delinquencies which occur during a service member's tour of active duty be reported to credit bureaus?

Freddie Mac has instructed servicers not to send a report to a credit repository with respect to any mortgage for which relief under SSCRA has been approved. However, many lenders report all mortgages which they service (full-file reporting) to credit repositories. In these situations, lenders would note that the borrower is paying as agreed.

U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210

JAN 4 1991

The Honorable G.V. (Sonny) Montgomery
Chairman
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter dated September 18 forwarding post-hearing questions regarding Veterans' Reemployment Rights.

I want to thank you for the opportunity to testify regarding Veterans' Reemployment Rights and I am glad to have the opportunity to respond to your questions.

Sincerely,

Thomas E. Collins

THOMAS E. COLLINS

Enclosure

Veterans' Affairs Committee
Post Hearing Questions

Question 1. In your statement you mention that the legislative proposal would expand protection for Federal employees by requiring the Federal Government to be a model employer and by giving the Merit Systems Protection Board explicit authority to adjudicate Federal worker claims.

In testimony before the Education, Training and Employment subcommittee two years ago, it was pointed out that no one serves as an advocate for federal employees when they are in a dispute with an agency regarding veterans reemployment rights. Would the legislation you describe address this problem?

It would be premature to discuss what this bill provides for until the Administration has reached its final position with regard to this proposal. However, as I stated in my testimony, there will be Merit Systems Protection Board adjudication. The Administration is concerned that all employees' rights be effectively enforced.

It is noteworthy that since the 1988 hearing, the Office of Personnel Management has issued guidance on rights of Federal employees leaving for military service. This guidance is consistent with the concept of the Federal Government being a model employer. A copy of the issuance is enclosed.

Question 2. In the August 1988 report of the Sixth Quadrennial Review of Military Compensation (QRMC), a recommendation is included which would grant a monetary incentive, in the form of a tax credit, to employers of reservists. Does the legislative proposal to which you refer in your statement include a proposal for an employer tax credit? If not, would you support such a proposal?

The proposal does not currently have such a provision. Taxation issues are particularly sensitive and also involve the budget process, requiring special considerations not present in other areas of reemployment rights. Before taking any position, other members of the Administration would have to be consulted.

Question 3. The Subcommittee received testimony in 1988 recommending that the VRR law be amended to provide declaratory or injunctive relief to reservists, prior to entrance onto active duty, when an employer objects to the employee's absence due to reserve responsibilities. Would your legislative proposal provide such relief?

This is still an issue, one that the Administration is looking at closely. However, it would be premature for me to comment at this time on whether it will be addressed in the Administration's proposal.

Question 4. VETS does not have subpoena authority. In what way has the lack of that authority adversely affected the ability of VETS to negotiate VRR cases?

The Department of Labor has subpoena authority under most of the statutes it is charged with enforcing, but not under Chapter 43. From time to time, we are faced with an uncooperative employer who insists, for example, that a veteran would have been laid off during military service if he or she had been employed at the time, but the employer refuses to give us access to seniority roster and other records so we can confirm this assertion. Similarly, it is not uncommon for an employer to send us excerpts from company records, but then refuse us access to the files. Without such access, we cannot be certain of the context of the documents provided, and we do not know whether there are other documents in the files which may support the claimant's case and does not detract from the employer's argument.

Our VRR Manual provides that when we cannot complete an investigation because of employer non-cooperation, we refer the case to the appropriate United States Attorney, via the Solicitor of Labor and the Attorney General, with a request that suit be filed to obtain access to employer records through the discovery process. As you can imagine, when the employer fails to cooperate, the Department of Labor has difficulty compiling an investigative record sufficient for the United States Attorney's determination of whether a reasonable basis exists in fact or law for filing suit.

Question 5. During the 1988 hearing, the Subcommittee was told that, in certain instances, judges were adjudicating VRR disputes based on "reasonableness" -- that is, they were weighing the imposition and hardship on the employer versus the military obligations of the employee-reservist. Has this issued continued to be a problem? If so, does the legislative proposal you mentioned address this concern?

The Administration is looking at this issue very closely. However, it would be premature for me to comment at this time on whether it will be addressed in the Administrations' legislative proposal.

Question 6. For the record, please provide the Committee with a breakdown of VRR cases handled by VETS staff during FY89 and FY90. This information should be broken down by state, type of employer (private/state or local government/federal government), general description of the issue involved (hiring discrimination, refusal to approve leave, etc.), resolution of the case (successfully mediated, referred to the Department of Justice, etc.), case processing time (0-30 days, 31-60 days, 61-90 days, etc.).

This information is maintained by our Directors for Veterans'

Employment and Training (DVET) in each State. We do not compile this information specifically as requested at the national office. Therefore, it will take some time before we can compile this information. Rather than delaying our response, the information requested will be provided under separate cover.

Question 7. In your statement you noted that VETS has responded to 3,500 VRR inquiries since the call-up of the Selected Reserve on August 22, 1990. How many inquiries were made during the similar timeframe in 1989?

Our staff responded to approximately 650 inquiries during the similar timeframe in 1989.

Question 8. Please provide the Committee with copies of any pamphlets or fact sheets published by the Department of Labor regarding veterans' reemployment rights.

We are enclosing our fact sheets on VRR for the record.

Question 9. What is the status of the 57 VRR cases that were referred to DOJ in FY 1989 for litigation? Please provide the Committee with a brief description of each case, the date the case was referred to DOJ, and the current status of the case.

Our records show that there were 43 cases referred to the Department of Justice, including several with recommendations not to litigate, in FY 1989. The case-by-case follow-up revealed that of the cases referred, six were settled with a cash recovery of $88,088. Of the remainder, 22 are still pending and in 15 instances a determination not to prosecute was made based on the merits of the individual claims. The case characteristics information, while maintained by our DVETS, will have to be compiled through the regional offices and will require additional time to compile. This information will be forwarded under separate cover as soon as possible.

Question 10. In testimony presented to the Education, Training and Employment subcommittee in July 1988, we were told the interagency task force working on revision of reemployment rights provisions had been meeting for about a year and that "within the near future" legislative recommendations would be forthcoming.

Additionally, the DOD Sixth Quadrennial Review of Military Compensation, in its report dated August 1988, recommended several significant changes to current law affecting veterans' reemployment. In this document several references were made to the work being done on this issue by the Interagency Task Force, and the clear implication was that the task force would soon come forth with recommendations for legislative change.

a. What agencies are represented on this task force?

b. Why, after three years, has the task force still not made its recommendations for change in the VRR statute?

c. In your testimony you mention an Administration legislative proposal. Has a proposal been submitted to OMB for approval? If so, how long has it been at OMB? Has OMB told you when the proposal will be released? Do all of the agencies on the task force support the proposal that was submitted to OMB? When will this proposal be transmitted to the Congress?

The agencies represented on the Interagency VRR Task Force were the Departments of Defense (including the National Committee for Employer Support of the Guard and Reserve), Veterans' Affairs, Justice and Labor; also, we consulted with the Office of Personnel Management.

The Task Force completed its work which resulted in the preparation of a draft legislative proposal. This proposal was submitted to the Office of Management and Budget several months ago for interagency coordination. Several agencies did have extensive comments. These comments were thoroughly reviewed and many were incorporated into the next draft of the proposal.

As a result, a new improved version was prepared and transmitted to OMB for interagency coordination on August 31, 1990. That revised proposal is currently proceeding through the legislative coordination and clearance process. All agencies are working together to finalize the proposal as soon as possible.

Question 11. What outreach efforts are being made by the Department of Labor to insure that reservists called to active duty are fully aware of their rights under Chapter 43 of title 38?

As I stated during my testimony, we have made every effort to publicize to both reservists and employers the features of Chapter 43.

This has included radio and television interviews by VETS' staff and both national and local press releases.

Question 12. Please describe for the Committee the actions which should be taken by a member of the Selected Reserve who feels his or her rights under Chapter 43 of title 38, United States Code, have been violated.

Whenever a member of the Selected Reserve or National Guard or a veteran feels their that his or her rights under Chapter 43 have been violated, he or she should look up the telephone number of the Director for Veterans' Employment and Training within the Department of Labor listings in the government section of the telephone directory and give us a call. VETS will answer questions, provide him or her a claim form to fill out with the details and where appropriate, initiate action to secure relief.

Question 13. In your testimony you indicate that you received an increased number of VRR inquiries as a result of the recent call-up. Obviously there is a concern about the potential increase of benefits-related cases which cannot be resolved and which therefore must be referred to the Department of Justice.

Do you believe that you have sufficient personnel and resources to handle the anticipated increase in inquiries and complaints?

Have you been in contact with the Department of Justice to discuss the anticipated increase in referred cases?

We are planning to handle any increased workloads with our existing staff. Most of our staff has received training in Veterans' Reemployment Rights and we have 22 positions identified as VRR Agents with specific expertise in VRR.

We are in regular contact with the Department of Justice. It seems premature to involve the Department of Justice until our workload figures start increasing, since there is a lag time before they would feel any increased workloads that may result from this callup.

Question 14. If a returning servicemember finds that he or she has been laid off as part of a large layoff affecting similar workers, under what law would be the service member be entitled to unemployment compensation?

Eligibility for unemployment compensation would be based on a multitude of factors including the servicemember's prior civilian work history; length of active duty during recall; recency of prior active duty; ability to work upon return, and State statutes and court decisions for the particular State in which the servicemember had been employed.

Barring recent active military service prior to the recall, the Federal Unemployment Compensation for Ex-Servicemembers (UCX) law will not apply unless the servicemember serves in continuous active duty for 180 days or more (5 U.S.C. 8521(a)). In every other situation the unemployment compensation statute for the State in which the servicemember was employed would be the applicable law.

Therefore, we take a case by case approach to these situations, and recommend that a returning service member under these circumstances contact our field staff, which would work with employers if appropriate, and with State unemployment compensation staff to resolve each issue based on statutes or procedures appropriate to that State.

Question 15. We had heard that members called to active duty

would be entitled to retain the benefits of employer-supported health insurance. Under what circumstances would this be true?

If there is an interruption, will pre-existing conditions be excluded from coverage? Does it make any difference if the employer self-insures or contracts for coverage?

We are aware that many employers, faced with the uncertainties of the current situation, have elected to voluntarily continue coverage at least during a transition period, or longer, to reduce the concerns of the departing reservists. We encourage employers to do so because it makes good sense and will greatly assist the families of these dedicated service members.

The law itself only requires an unpaid leave of absence and restoration of benefits upon return from military service. However, the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) does provide for continuation of group coverage for employees leaving their jobs although employees may be required to pay the premiums for such coverage. Those covered employers who are required to offer coverage for certain categories of employees are also required to make the same offer to recalled reservists. Other employers may provide continuation of health benefits based on the employers' policies or collective bargaining agreements with their employees.

The Department of Labor has always held that, after reinstatement, the returning servicemember has the immediate right to health insurance, without a waiting period, because he or she is not treated as a new hire. After reinstatement, he or she is to be treated as if continuously present. This precludes application of "waiting period" requirements imposed on new employees and employees returning from non-military leaves of absence.

The reemployment statute does not give the returning service member the right to be considered as having been covered by health insurance during the period of military absence, unless the plan provides such coverage for non-military leaves of absence. This distinction is important when pre-existing conditions are considered. The group health insurance policy may not cover any service member or dependents' conditions which developed during the service members' military service, unless the policy covers this situation for non-military service employees.

The Department of Labor will pursue any claim by a returning service member if a group health insurance treats conditions existing or developing prior to military service as "pre-existing" and thus not covered within this context. There is no difference in the rights of returning service members or their treatment, based on whether the employer self-insures or contracts for coverage.

U.S. Department of Labor

Assistant Secretary for
Veterans Employment and Training
Washington D.C 20210

FEB 6 1991

The Honorable G. V. (Sonny) Montgomery
Chairman, Committee on
  Veterans' Affairs
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am enclosing with this letter the data regarding Veterans' Reemployment Rights cases that we have thus far been able to compile in response to your request. By February 13 the Veterans' Employment and Training Service will complete the case file review entailed in compiling all of the data you requested regarding the types of employers and specific issues involved in each case; we will then submit the remainder of the data you requested.

I regret the length of time it has taken to compile the information you requested. I hope you can appreciate the fact that much of what you requested could only be gathered by having staff go through each case file for the two year period, and those same staff also have had to respond to the greatly increased volume of VRR inquiries and requests for technical assistance received due to Operations Desert Shield and Desert Storm. The Veterans' Employment and Training Service is very lean in terms of administrative and clerical support, so we necessarily have tried to streamline the information collection burden as much as possible. The data requested was not a part of our routine collection.

As a result of responding to your request, however, we are instituting routine collection of the type of data you have required so as to have it available in the future.

Sincerely,

THOMAS E. COLLINS

Enclosure

Region: VETS TOTAL
(Composite)

PY: '89

	Number Opened	Number Closed
Total Number of Cases	1370	1380
Type of Employer		
Private		
State		
County		
City		
Issues		
Seniority		
Discrimination		
Discharge		
Lost Wages		
Pay Rate		
Other		
Pension		
Reinstatement		
Status		
Vacation		
Health Benefits		
Layoff		
Other Benefits		
Resolution		
Not Eligible		53
No Merit		280
Administrative		95
Claim Withdrawn		222
Claim Settled		218
Claim Granted		438
Referred for Litigation (Valid Claim)		43
Referred for Litigation (Not Recommended by VETs)		30
Gross $ Recovery		$ 564,000
Processing Time		
0 - 30		485
31 - 60		345
61 - 90		196
91 - 120		130
Over 120		224

Region: ____________ FY:'90
(Composite)

	Number Opened	Number Closed
Total Number of Cases	1534	1445
Type of Employer		
Private		
State		
County		
City		
Issues		
Seniority		
Discrimination		
Discharge		
Lost Wages		
Pay Rate		
Other		
Pension		
Reinstatement		
Status		
Vacation		
Health Benefits		
Layoff		
Other Benefits		
Resolution		
Not Eligible		38
No Merit		316
Administrative		55
Claim Withdrawn		176
Claim Settled		274
Claim Granted		525
Referred for Litigation (Valid Claim)		37
Referred for Litigation (Not Recommended by VETs)		24
Gross $ Recovery		$ 630,000
Processing Time		
0 - 30		564
31 - 60		345
61 - 90		214
91 - 120		128
Over 120		194

U.S. Department of Labor

Assistant Secretary for
Veterans' Employment and Training
Washington, D.C. 20210

OCT 0 4 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This is in response to your letter dated September 13 forwarding post-hearing questions regarding Veterans' Reemployment Rights.

I want to thank you for the opportunity to testify regarding Veterans' Reemployment Rights, and I am glad to have the opportunity respond to your questions.

Sincerely,

Thomas E. Collins
THOMAS E. COLLINS

Enclosure

Response to Post-Hearing Questions

Joint Hearing
Committees on Veterans' Affairs

1. I was pleased to hear that the Office of Personnel Management is taking the initiative in urging Federal agencies to observe reserve members employment rights. Many reservists, however, are employees of State and local governments. I note on page three of your statement that Labor is making efforts to achieve the same spirit of cooperation with State and local government employers. This phrasing is fairly vague. Are you having problems with State and local government officials, and, if so, what problems are you having?

Response:

We are not having widespread problems with State and local government agencies. However, as you noted in your question, many reservists are employees of such entities, and thus the call-up has caused many inquiries about reemployment rights to come to us from that sector. For instance, one city misinterpreted the statutory requirement of reservists to apply for reemployment within a certain time period to mean that the city agencies could postpone re-hiring until the end of that time period. We believe our letter to the city resolved that misinterpretation and thus prevented problems that might have occurred.

The field staff of the Veterans' Employment and Training Service are actively engaged in disseminating accurate information to State and local governments about the law and their availability to provide technical assistance to employers and to reservists and their dependents. We have distributed up-to-date informational materials, and thus far we are pleased with the responses to the situation by State and local governments.

2. I was pleased to hear from your testimony that you will soon be able to propose new legislation to clarify and simplify the existing employment protection law and streamline administrative processes for resolving cases. Would you explain the relationship between the Interagency Task Force that worked under your and your predecessor's direction for nearly two years to develop this legislative proposal, and the Sixth Quadrennial Review of Military Compensation Report, dated August 1988, that made so many recommendations in this area?

Response:

The Interagency Task Force was still active and still working on the proposed new legislation when the Sixth Quadrennial Review of Military Compensation Report was developing its recommendations. The recommendations were also considered during the development of the draft legislation, which is currently being reviewed.

3900 Wisconsin Avenue, NW
Washington, DC 20016-2899
202 752 7521

Robert J. Engelstad
Senior Vice President—
Mortgage and Lender Standards

FannieMae

October 9, 1990

The Honorable G. V. (Sonny) Montgomery
Chairman, Committee on Veterans' Affairs
U. S. House of Representatives
335 Cannon House Office Building
Washington, DC 20515

HR-5814

Dear Mr. Chairman:

I am replying to your letter requesting answers to certain questions about the Soldiers' and Sailors' Civil Relief Act that were not brought up at the Full Committee hearing on September 12. Specific responses to each of the questions are enclosed, using the format you specified.

Sincerely,

Robert J Engelstad

Enclosure

1. Could you explain to the Committee what impact the Soldiers' and Sailors' Civil Relief Act will have on your industry. How many loans will be affected?

We have no way of knowing the extent of the impact that the Act will have on the mortgage finance industry. Different parts of the Act have more financial impact than others. For example, the reduction in the mortgage interest rate to 6% will have an immediate financial impact, while other provisions, such as requiring court-authorized foreclosures or extending redemption periods, can also have a financial impact, although less immediate. The degree to which Fannie Mae (and the industry as a whole) will be affected depends on the number of reservists that eventually are called-up, the percentage of those called-up who are homeowners, the length of their active duty periods, and the duration of the U. S. involvement in the Persian Gulf.

2. If a reservist is unaware of the Soldiers' and Sailors' Civil Relief Act and continues to pay a higher interest rate, could the difference be recouped?

Yes. Under Fannie Mae's policy, a reservist is entitled to the interest rate reduction for payments due during his or her period of active duty. This means that even if a reservist does not immediately inform the mortgage servicer about an active duty status, we require the servicer to reapply any payments made at a higher interest rate once it is informed of the active duty status. The actual dollar difference can be used to reduce the mortgage balance or refunded to the reservist, depending on his or her needs.

3. Are you treating dual income families differently than single income families under the provisions of the Soldiers' and Sailors' Civil Relief Act?

No. Because Fannie Mae's policy does not require the reservist to show need for the reduction in interest rate to 6%, we are treating single-income and dual-income families the same. If a reservist needs additional assistance, we will follow Fannie Mae's standard forbearance policies to determine the degree of assistance that should be provided on the basis of the reservist's individual needs. Single-income families (because they have a greater need) may receive more in the way of assistance by having their monthly payments reduced to a greater extent. Actions under provisions of the Act that relate to court-authorized foreclosures or extension of redemption periods would not be determined differently for single- and dual-income families.

3900 Wisconsin Avenue, NW
Washington, DC 20016-2899
202 752 7521

Robert J. Engelstad
Senior Vice President—
Mortgage and Lender Standards

FannieMae

September 21, 1990

The Honorable Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I am replying to your letter transmitting follow-up questions to my testimony at the joint hearing of the Senate and House Committees on Veterans' Affairs regarding benefits extended under the Soldiers' and Sailors' Civil Relief Act. Specific responses to each of the questions are enclosed.

Sincerely,

Robert J. Engelstad

Enclosure

cc: Honorable G. V. "Sonny" Montgomery
    Honorable Frank H. Murkowski
    Honorable Bob Stump

Joint Hearing
Committees on Veterans' Affairs
Post-Hearing Supplemental Questions

1. At least one large bank voluntarily has implemented a program under which it allows reservists on active duty to suspend payments, including both principal and interest, on all loans. Regular payments will resume following active duty, presumably with suspended payments tacked on at the end of the term of the loan. Section 700 of the Soldiers' and Sailors' Civil Relief Act allows servicemembers to seek similar relief in court.

A. Do you believe this kind of program might be offered by your member or participating institutions?

Fannie Mae will agree to a complete stay in enforcement of the mortgage terms that results in the suspension of monthly mortgage payments while a reservist is on active duty status. Although the Act grants this right only if the servicemember obtains a court order, Fannie Mae generally will grant the relief without the servicemember having to go to court.

B. Does such a program entail any financial advantages to a lender in light of the 6-percent interest-rate cap in Section 206 of the Act?

If a lender interprets the Act as providing for suspended payments to be repaid based on the initial mortgage interest rate (rather than at the reduced 6% rate that applies to payments made during the servicemember's period of active duty), then it would be more financially advantageous for a lender to grant a complete stay in enforcement since there would be no "forgiven" interest. Fannie Mae has chosen to give the servicemember the benefit by applying the 6% interest rate reduction to payments that are suspended during a servicemember's active duty.

C. What should be the result under the Act if a reservist who takes advantage of this type of offer returns from active duty and retroactively seeks to invoke his or her right to reduced-interest payments for the months that would have been payable during the period of service, but actually are being paid on a delayed basis?

Under Fannie Mae's policy, the reduced interest rate would be applied to the suspended payments in most cases. Because we encourage servicemembers to pay as much as possible toward their mortgage obligations during their active duty period, those individuals who would be granted the stay in enforcement of the mortgage terms would be those borrowers whose ability to make their mortgage payments was materially affected by their active duty status. We believe that such individuals should also receive the benefit of the reduced interest rate when it comes time to repay the suspended payments. We believe that the Act should make it clear that

the reduced interest rate applies to suspended payments only when the servicemember can show that entry to active duty status materially affected his or her ability to make payments of any amount toward the mortgage obligation.

2. During the testimony by the Administration witnesses, I related an incident in which a reservist who has not been called to active duty was discriminated against by a broker he had retained to help sell his house. I also described how his real estate agent informed him that lenders are looking hard for any excuse they can find to deny loans to reservists.

A. Does your organization allow this type of discrimination by your members or participants?

No, we do not. We publicly announced to all Fannie Mae-approved lenders that reservists could be qualified on the basis of their civilian income, regardless of whether they had been called to active duty. We further assured lenders that if a reservist were called to active duty after the loan closing and the interest rate reduced to 6%, the mortgage could still be delivered to us as long as it met our eligibility requirements.

B. What measures has your organization taken or does it intend to take to discourage this practice by your members or participants?

Since our announced policy gives lenders an outlet for selling reservists' mortgages in the secondary market, we believe that it should go a long way toward assuring that reservists are not discriminated against because of the possibility that they may be called to active duty. We will continue to publicize our concerns about potential discrimination and emphasize that new mortgages made to reservists are eligible for delivery to Fannie Mae.

C. Please look into this matter and submit for the record any information you can provide regarding whether and to what extent reservists are experiencing discrimination in the credit and housing fields and what legislative remedies your organization would support.

We do not believe that there is any widespread discrimination against reservists. Instances that initially appeared to be examples of discrimination may have been more an example of lenders, brokers, or agents not being aware of what position the secondary market agencies were going to take regarding the acceptability of mortgages made to reservists and the terms under which they were to be underwritten. That, along with confusion about the provisions of the Soldiers' and Sailors' Civil Relief Act, may have lead to misstatements of fact or misunderstandings. Now that most agencies have clearly stated their positions, we believe that there is less

hesitancy to make new loans to reservists. Absent any documented evidence of discrimination, we do not think any legislative remedies should be necessary at this point.

AMERICAN
BANKERS
ASSOCIATION

1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

GOVERNMENT
RELATIONS/
OPERATIONS AND
RETAIL BANKING

FEDERAL COUNSEL
Nessa E. Feddis
202/663-5433

15 October 1990

The Honorable G.V. Montgomery
Chairman
Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman,

Enclosed are the responses of the American Bankers Association and the Consumer Bankers Association to your questions regarding the Soldiers' and Sailors' Civil Relief Act. If you wish additional information or further assistance, please call Marcia Sullivan at the Consumer Bankers Association or me.

Sincerely,

Nessa E. Feddis

Nessa Eileen Feddis

Enclosure
cc: Honorable Alan Cranston

Responses of the American Bankers Association and the Consumer Bankers Association To Questions from Congressman Montgomery On the Soldiers' and Sailors' Civil Relief Act

1. With regard to the Soldiers' and Sailors' Civil Relief Act, how does reducing interest on loans affect their classification with respect to regulatory capital requirements and bank ratings?

Loans with interest rates reduced in accordance with the SSCRA would not be reclassified on account of the lower interest rate. However, if principal payments were suspended, then, in theory, the loan might be "classifiable." Thus far, the regulators have not downgraded such loans in practice. Nevertheless, this approach toward the suspension of principal payments on reservists' loans may change if the crisis escalates and the likelihood of loan repayment consequently diminishes due to prolonged reduction of reservists' salary, for instance.

2. Could you explain in more detail what impact the Act has on revolving charges and open lines of credit and how these will be structured.

Under SSCRA, only those obligations incurred before being called into active service are subject to the 6% interest rate limit. Accordingly, only obligations on credit card accounts or home equity line accounts which are outstanding at the time the reservist is called to active duty are subject to the 6% interest rate limit: obligations incurred on these accounts after a call to active duty are not subject to the statutory 6% interest rate cap. Nevertheless, many banks are applying the 6% interest rate to credit card transactions made before and after activation.

3. If a reservist is unaware of the Soldier's and Sailors' Civil Relief Act and continues to pay a higher interest rate, could the difference be recouped?

We believe that the difference may be recouped. We also believe that military personnel are well informed about their rights under SSCRA, including the right to the reduction in interest rates. First, the Act requires the Departments of the Armed Forces to inform persons in and entering military service about their rights under SSCRA. Second, those Departments appear to have undertaken substantial efforts to ensure that military personnel are aware of their rights.

4. Under what circumstances would you petition a court to reinstate a higher mortgage interest rate?

Only under rare circumstances would a bank petition a court to reinstate a higher mortgage interest rate. Banks have demonstrated both in the past and in the current crisis that they stand ready to comply with the letter and spirit of the law. However, if, for example, there were clear evidence of fraud or abuse, a bank might petition a court to reinstate a higher interest rate.

5. Will delinquencies which occur during a service member's tour of active duty be reported to credit bureaus?

Some banks may report delinquencies which occur during a service member's tour of active duty. However, reservists who have been delinquent are permitted to add a letter to their credit file explaining the reasons for delinquencies and noting their tour of duty. Moreover, if their credit record otherwise indicates a history of credit responsibility, the delinquency during active duty may be excused when a bank subsequently evaluates creditworthiness.

NAFCU
NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS
P.O. Box 3769 WASHINGTON, DC 20007
(703) 522-4770

October 5, 1990

The Honorable G. V. Montgomery
Chairman
Committee on Veterans' Affairs
335 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The enclosed information is provided in response to your letter of 18 September enclosing additional questions concerning the impact of the Soldiers' and Sailors' Civil Relief Act upon credit unions.

Should you require additional data, please do not hesitate to contact us at the above address or by calling NAFCU's Vice President for Government Affairs, Bill Donovan, at (703) 522-4775, ext. 503.

Sincerely,

T. J. Hughes
Treasurer

TJH:dt
Enclosure

NATIONAL ASSOCIATION OF FEDERAL CREDIT UNIONS

1. Could you explain to the Committee what impact the Soldiers and Sailors Civil Relief Act will have on your industry. How many loans will be affected?

Ans. It is not possible to provide useful estimates of the aggregate impact of the Soldiers' and Sailors' Civil Relief Act on federal credit unions, much less on all U.S. credit unions (federally and state chartered), because there is no way of knowing:

- How many federal credit union members are eligible for call-up to active duty.
- Of those eligibles how many will be called up.
- Of those actually called up, how many will request relief under the Act, and for how long.

Additionally, the ultimate overall scope of the call-up, in terms of numbers of persons and duration of their active duty, is unknown.

However, the experience, through the end of September, of the two largest federal credit unions serving the Department of Defense may be of interest to the Committee and is reflected in the table below, and in the answers to questions 2 through 4 which follow.

	Navy Federal Credit Union	Pentagon Federal Credit Union	Aggregate
a. Number of Members	1,086,375	395,498	1,481,873
b. Number of Members Requesting/Granted SSCRA Relief	92	43	135
c. Closed-end Consumer Loans for which SSCRA Relief was requested			
- Number	90	5	95
- Outstanding Balances	$720,430	$33,231	$753,661
d. Credit Card accounts for which SSCRA relief was requested			
- Number	36	26	62
- Outstanding Balances	$61,652	$85,444	$147,096
e. Other open-end loans (not secured by real property) on which SSCRA relief was requested			
- Number	6	10	16
- Outstanding Balances	$22,441	$46,344	$68,785
f. Home Equity Lines of Credit for which SSCRA relief was requested			
- Number	-	-	-
- Outstanding Balances	-	-	-
g. First Mortgages for which SSCRA relief was requested			
- Number	11	-	11
- Outstanding Balances	$1,189,746	-	$1,189,746
h. Second Mortgages for which SSCRA relief was requested			
- Number	-	2	2
- Outstanding Balances	-	$39,761	$39,761

i. Total loans for which SSCRA relief was requested (c.-h.)			
- Number	143	43	186
- Outstanding Balances	$1,994,269	$204,780	$2,199,049
j. Average total indebtedness per member on which SSCRA was requested	$21,677	$4,762	N/A
k. Estimated total monthly interest loss due to reducing rate to 6% for SSCRA relief requests.	$6,716*	$1,050	N/A

*Includes $1,674 loss borne by investors to whom NFCU mortgage loans were sold.

2. If a reservist is unaware of the Soldiers and Sailors Civil Relief Act and continues to pay a higher interest rate, could the difference be recouped?

Ans. Yes, the difference could be recouped if requested before the loan is paid off or the member leaves active duty, whichever occurs first. (If the loan has been paid off or the member was paying throughout his period of active duty, either would be prima facie evidence that he was not "materially affected.") The member would need to be able to show the date called to active duty.

3. Are you treating dual income families differently than single income families under the provisions of the Soldiers' and Sailors' Civil Relief Act?

Ans. Dual income families are being treated the same as single income families. There is no restriction placed on a member's invocation of relief under the Act merely because he/she is a member of a dual income family. In addition, where the spouse, living in the same household with a called up member who has requested relief under the Act, has indebtedness under his/her own name but is relying on the income of the called up member to support repayment, SSCRA relief is also being extended to the spouse's indebtedness.

4. Would home equity lines of credit be treated in a manner similar to home mortgages?

Ans. Probably not. The entire principal of a home mortgage entered into before the member is called up is eligible under the Act for reduction of the interest rate to 6% and forbearance on payments (although escrow amounts customarily included with monthly mortgage payments of principal and interest are not reduced or eligible for forbearance). On the other hand, home equity lines are open-end lines of credit against which the borower lodges charges from time to time and makes periodic repayments of accrued interest and at least part of the outstanding principal balance. However, indebtedness lodged against a home equity line after the member enters on active duty is not eligible for relief under the Act.

If the borrower has invoked the Act for pre-call up indebtedness there is a presumption that it is because his or her financial situation has been adversely affected by the call up. A natural question then is whether this individual's creditworthiness now justifies a further increase in indebtednes up to the limit granted on the basis of a pre-call up financal situation--especially when such added indebtness will be earning an unremunerative interest rate (6%), and action to foreclose on the collateral in the event of default may well be delayed under provisions of the Act. For credit unions with a large regular military membership, this also raises the question of whether it is fair to charge full-time active duty personnel an interest rate approximately twice as high as that which the called-up reservist or retiree is charged for an equivalent form of credit. For these reasons, many credit unions may elect to freeze home equity lines of credit at the pre-call up balance and treat post-call up extensions of credit under separate arrangements.

In addition, the existence of a "secondary market" (GNMA, FNMA, FHLMC and private investors) for home mortgages makes it even more likely that home equity lines of credit will be treated differently. Most home equity lines are retained in the portfolios of credit unions, rather than being sold to the secondary market as is the case with home mortgage loans made by many credit unions. (There is no established secondary market for home equity lines of credit.) Because of their varying policies, the risk for home mortgage loans sold on the secondary market differs according to the investor, and also differs from home equity lines held in portfolio by the lender.

When the SSCRA was enacted, there were no lines of credit or secondary markets. Clearly, the SSCRA does not adequately address all of the questions relating to mortgages and home equity lines of credit. It is believed that as long as the crisis is relatively short-lived, most financial institutions will try to do the "patriotic" thing. However, a long-term crisis involving a larger numbers of Reservists could have a dramatic impact on mortgage and equity lenders (including credit unions) and on the secondary markets.

1776 G Street, NW
PO Box 37347
Washington, DC 20013

Freddie
Mac

October 4, 1990

The Honorable G.V. Montgomery
Chairman
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Montgomery:

Thank you for your letter of September 18 in regard to the Soldiers' and Sailors' Civil Relief Act. I am pleased to answer your questions on behalf of Freddie Mac.

In accordance with your request, our answers are enclosed in the specified format.

If I may be of further assistance in this matter, please do not hesitate to contact me at 202-789-4750.

Very truly yours,

Jeanne Broyhill

Jeanne Broyhill
Director, Federal Relations
Government Affairs

enclosure

FEDERAL HOME LOAN MORTGAGE CORPORATION (FREDDIE MAC)

1. Could you explain to the Committee what impact the Soldiers' and Sailors' Civil Relief Act will have on your industry. How many loans will be affected?

Because neither Freddie Mac or its servicing institutions usually neither request nor keep data on the military status of borrowers, we do not yet know exactly how many mortgages we own will be affected by the provisions of the Act. At this point in time, we do not believe the impact will be material.

However, as Freddie Mac indicated during testimony before your committee on September 12, 1990, the duration of our country's military commitment in the Middle East and the ultimate numbers of reservists called into service could eventually have a material effect on our company. Given the worsening condition of our financial system, we believe Congress should carefully and thoroughly review the contemporary application of the Act, particularly its interest rate cap provision.

2. If a reservist is unaware of the Soldiers' and Sailors' Civil Relief Act and continues to pay a higher interest rate, could the difference be recouped?

Freddie Mac would provide the reservist with a retroactive reduction in interest payments. Indeed, we expect this to happen as information about the Act's relief provisions is disseminated to service members in the following weeks and months.

3. Are you treating dual income families differently than single income families under the provisions of the Soldiers' and Sailors' Civil Relief Act?

Freddie Mac's policy is to provide all service members with relief due them under the provisions of the Act, and we have not instructed our Servicers to treat dual income families differently than single income ones.

In addition to relief required by the Act, we are making our standard forbearance measures available to service members on a case-by-case basis. Eligibility for this additional level of relief depends on the degree of financial hardship resulting from military service. As a result, in many cases a single income family may be more likely than a dual income family to qualify.

AMERICAN
BANKERS
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1120 Connecticut Avenue, N.W.
Washington, D.C.
20036

GOVERNMENT
RELATIONS/
OPERATIONS AND
RETAIL BANKING

FEDERAL COUNSEL
Nessa E. Feddis
202/663-5433

28 September 1990

The Honorable Alan Cranston
United States Senate
Committee on Veterans' Affairs
Washington, D.C. 20510-6375

Dear Senator Cranston,

Mr. Donald W. Grigley has asked Marcia Sullivan from the Consumer Bankers Association and me to respond to your post-hearing questions regarding benefits and services extended to members of the military and reserves called to service as a result of Operation Desert Shield. Our responses are enclosed.

If you wish additional information or further assistance, please call Marcia Sullivan or me.

Sincerely,

Nessa Feddis

Nessa Eileen Feddis

Enclosure

cc: Honorable G.V. "Sonny" Montgomery

Responses of the American Bankers Association and the Consumer Bankers Association to Questions from Senator Cranston On the Soldiers' and Sailors' Civil Relief Act

1. At least one large bank voluntarily has implemented a program under which it allows reservists on active duty to suspend payment, including both principal and interest, on all loans. Regular payments will resume following active duty, presumably with suspended payments tacked on at the end of the term of the loan. Section 700 of the Soldiers' and Sailors' Act allows servicemembers to seek similar relief in court.

A. Do you believe this kind of program might be offered by your member or participating institutions?

There are banks offering to suspend all payments of interest and principal during the period reservists are on active duty. These programs are intended to reduce the financial pressures of reservists called to active duty during the Middle East crisis. It is our understanding that a number of programs and options are available.

For example, under these programs, reservists may choose to suspend all payments or to make payments of any amount during the period of active duty. If the reservist opts to make payments, those payments are applied to reduce the principal. Whether the reservist makes payments during this period or not, the interest rate is 0% and is never recovered by the bank.

If the reservist makes principal payments according to the amortization schedule, then upon the reservist's return, the regular payment schedule resumes. For example, assume a $1,000 monthly payment, $300 representing principal and $700 representing interest. If the reservist pays only $300 a month, the $700 interest is forgiven and is never recovered. Once the reservist returns, the payments return to $1,000 per month according to the payment schedule.

The reservist may choose to pay more than the principal amount of the amortization schedule and thereby reduce the principal outstanding. In this case, under the example above, the reservist could pay $600 which is applied to reduce the principal. The monthly $700 in interest is again forgiven. In addition, because the principal outstanding is reduced, the total interest paid after return from active duty is also less than it would have been if only the principal from the regular schedule had been paid.

To increase dramatically the cash available on a monthly basis, the reservist under the same program may decide to forego making any payments during the period of active duty. In this case, while the interest is forgiven, the principal is not. Thus, if the reservist's outstanding principal was $50,000 when called to active duty, it remains $50,000 when the reservist returns. When the reservist returns, the original contract interest rate is applied to the outstanding balance to calculate the payment schedule.

Some banks are going even beyond applying a 0% interest rate. For example, one large bank allows reservists to suspend payments of interest and principal during the period of active duty and applies the 6% interest rate for at least one year after the reservist returns.

B. Does such a program entail any financial advantages to a lender in light of the 6-percent interest-rate cap in section 206 of the Act?

No, to the contrary. The bank loses all interest for the period of active duty, not just the difference between the contract rate and 6 percent. That interest is not regained.

C. What should be the result under the Act if a reservist who takes advantage of this type of offer returns from active duty and retroactively seeks to invoke his or her right to reduced-interest payments for the months that would have been payable during the period of service, but actually are being paid on a delayed basis.

As the example in Question 1A explains, the reservist has already enjoyed an interest rate less than 6 percent rate: the interest rate was reduced to 0% for the period of active duty. However, principal is not forgiven, so if the reservist chooses not to pay any principal, the principal outstanding will remain unchanged from the beginning to the end of active duty. The initial contract rate is then applied to the principal outstanding.

2. During the testimony by the Administration witnesses, I related an incident in which a reservist who has not been called to active duty was discriminated against by a broker he had retained to help sell his house. I also described how his real estate agent informed him that lenders are looking hard for any excuse they can find to deny loans to reservists.

A. Does your organization allow this type of discrimination by your members or participants?

The situation described at the hearing concerned real estate sales and the difficulty a reservist apparently encountered in selling his house due to the condition that the purchase was voidable in the event the reservist was called to active duty. Neither the ABA nor CBA represent real estate brokers and thus cannot respond to the conduct of the real estate broker.

We believe that the broker's statement that banks are looking for reasons to deny loans to reservists is without basis and have seen no evidence or reports supporting its validity. Banks treat reservist as they treat any credit applicant. Banks are generally interpreting any ambiguities in the Soldiers' and Sailors' Civil Relief Act liberally in favor of the reservist. As outlined in our testimony, many banks are accommodating their customers to an extent even beyond the specific requirement of the Act that banks reduce interest rates on loans to 6%.

> **B. What measures has your organization taken or does it intend to take to discourage this practice by your members or participants?**

Because there has been no evidence of banks discriminating on the basis of military status, we have taken no action. ABA and CBA have responded to hundreds of inquiries on the Act and have been and continue to educate their members on the requirements of the Act.

> **C. Please look into this matter and submit for the record any information you can provide regarding whether and to what extent reservists are experiencing discrimination in the credit and housing fields and what legislative remedies your organization would support.**

We will continue to monitor for any reports of credit discrimination on the basis of military status. At this time, we do not recommend any legislation on this matter.

THE SECRETARY OF VETERANS AFFAIRS
WASHINGTON

NOV 5 1990

The Honorable G. V. (Sonny) Montgomery
Chairman, Committee on Veterans' Affairs
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed please find the Department's responses to additional questions raised by you following the September 12, 1990, hearing on Soldiers' and Sailors' Civil Relief Act.

Sincerely yours,

Edward J. Derwinski

Enclosures
EJD/flc

FOLLOW-UP QUESTIONS TO 9/12/90 JOINT VAC HEARING REGARDING SOLDIERS' & SAILORS' CIVIL RELIEF ACT

QUESTION 1: Given the age of the act and the period that it was passed, do you believe the provisions for relief contained in the act are still appropriate? Are any changes to the act necessary to make it more helpful to today's service members?

ANSWER 1: We believe the provisions for relief contained in the act are basically still appropriate. While there is need for minor language updates, there are only a few technical areas that require immediate attention. Those are:

a. Section 205: Clarify this section to show that protection for the redemption rights of servicemembers continues only until the actual "obligated period of service" has been completed.

b. Section 206: The act should be clarified to indicate whether non-spouse co-obligors would be covered by the interest rate cap. Consideration should also be given to providing for administrative enforcement authority of the 6 percent interest provision. In this regard, it should be noted that questions have arisen regarding the 6 percent interest rate. There is some concern as to the appropriateness of a 6 percent interest rate cap, which was established in 1942, at a time when mortgage interest rates were significantly lower than they are today. VA understands that the Department of Defense is studying this issue to determine if the interest rate cap should be changed to provide the intended protection within the context of current market conditions.

c. Section 400: Amend the act to guarantee not only individual contract insurance, but also group insurance coverage. This would include both coverage that is entirely employer provided and coverage that is paid for wholly or in part by the insured member.

d. Section 401: If the SSCRA is to be continued, the amount of coverage guaranteed must be increased. In line with the ACLI's current figures on insured households in America, and assuming a modest increase for 1990, the VA recommends that SSCRA be amended to cover policies up to $120,000.

QUESTION 2: How does the Department insure that a veteran receives adequate protection under the act?

ANSWER 2: The best insurance that a veteran will take advantage of the protections of the act is to ensure that he or she is notified of these provisions. Official notification to the service member regarding the act is the responsibility of DOD. DOD outlined the many efforts taken in this regard in their testimony for the September 12 hearing.

VA acknowledges its role in assuring our support of any active duty member or family member who needs information or assistance regarding the act.

We have dispatched detailed information papers regarding the SSCRA provisions, as well as other potential benefit impact papers, to VBA field facilities. Specific information and circulars have been provided on loan guaranty, insurance and employment/reemployment rights. We have asked that all public contact employees be fully trained in this area and ready to respond to requests for information and assistance. We are providing briefings on SSCRA and benefits impact to VA medical center staff who serve in the Reserves or National Guard, and to their family members.

In the Loan Guaranty Program, VA Pamphlet 26-5 (chapter 5), distributed to veterans obtaining GI loans, provides a summary of benefits under the Act. In addition, VBA Circular 26-90-32, dated August 23, 1990, sets forth certain provisions of the act which may be of benefit to veterans. It was provided to field stations for distribution to lenders, holders, and servicers. It requests the extension of forbearance to members covered by the act, as well as to active duty personnel not covered by the act but experiencing financial difficulties due to overseas assignments. In the course of supplemental servicing, VA personnel may also offer guidance in appropriate cases.

QUESTION 3: Can an employer's life insurance carrier request a medical exam upon a member's reemployment? Can they refuse to cover returning service members?

ANSWER 3: This question can be answered only in general terms since the specific provisions of group life insurance policies vary among companies and from state to state. For non-contributory plans (i.e., where the employer pays all of the premium), an individual returning to work would normally be covered if he or she returns to a normal work week or schedule. In some cases a waiting or probationary period is applied to new employees (from one to six months) before they become eligible for insurance. The waiting period and/or requirement that a person is working a regular schedule provides the insurance company and employer (who is paying the premiums) with assurance that the employee is in relatively good health. We would assume that companies would not consider a returning serviceperson a new employee and that coverage would resume automatically when they return to work. For contributory group policies where the employee pays part of the premium, the employee is given a period of 31 days to apply for the coverage with no health requirements.

We have contacted one of the largest group life insurers in the country and they have stated that they will allow their group policyholders to continue protection for their employees who are called to active duty as a reservist for up to six months. During this period they will be considered on a leave of absence. If they return to work within six months their coverage will remain in effect just as it did before they were called to duty.

An employee who is terminated from a company that has group coverage normally has the right to convert the coverage to an individual policy; however, they are generally restricted to a permanent plan of insurance that is much more expensive.

Generally speaking, a reservist who is healthy enough to return to his or her former employment will probably not have a problem in being reinsured under a group policy offered by the company. The problem will arise for reservists who become disabled as a result of their service and who cannot return to their former job and are unable to obtain commercial insurance at "standard" premium rates (those charged to a healthy individual). These individuals would be entitled to $50,000 in VGLI coverage, and any coverage that they acquired on their own prior to becoming disabled (including any employer sponsored group coverage that they converted after they were terminated).

QUESTION 4: The Department notes that the Civil Relief Act does not apply to life insurance policies that include a "war clause" exemption from coverage, and that it does not apply to any group coverage that is in effect. Thus, the Act's provisions pertaining to life insurance are easy to circumvent and largely outdated. At the same time, increasing the maximum SGLI amounts to $100,000 or more could prove to be very costly. Are there other alternatives that could provide protection to service members at more reasonable costs.

ANSWER 4: We do not believe there is a problem with life insurance companies "circumventing" the law. To our knowledge, commercial life insurance policies issued during peacetime generally do not contain war clauses. War clauses have been used by companies in the past usually when they are being issued to individuals who were going into combat situations. War clauses are used by companies to protect against the uncertain risk associated with individuals involved in combat situations. The premiums charged by insurance companies are based on normal peacetime mortality experience and do not include a sufficient margin to cover the extra hazards associated with military hostilities. It is because of the uncertain and potentially high risk of death during a war, that the government became involved in underwriting life insurance for members of the uniformed services since WW I.

It is true that group policy insurance cannot currently be protected under the Act. Once again, we do not believe that group coverage represents a way for companies to circumvent the law, but rather reflects the fact that in the 1940's group insurance represented a relatively small portion of the total life insurance in force in the U.S. Today it represents close to 41% of the total life insurance coverage in the country. If the Act is amended we recommend that protection be extended to cover group policies.

As to the cost of increasing SGLI, the program is self-supporting during peacetime, and there are no costs to the government. The potential claims incurred through the "extra hazards" provision of the law, however, could be significant. As implemented, the provision provides that claim costs above normal peacetime levels, plus a 5% margin for fluctuations, will be paid by the individual service branches from their appropriation for military pay.

Over the last three years there has been an average of 2.3 million individuals on active duty. The annual number of active duty deaths per year over that period has been approximately 2,000. Assuming the same active duty force levels in 1990, premiums paid by the servicemembers would cover all deaths up to 2,100 (actual deaths plus the 5% margin). As a result of the extra hazards provision of the law, the services would pay for all claims in excess of this amount. For example, if there were 250 deaths above the 2,100 deaths expected, the cost to the services would be $25 million (250 x $100,000). It is expected that, under peacetime conditions, SGLI would continue to be a self-supporting program, even at the level of $100,000, with a minimum (one/half cent per $1,000) premium increase required from SGLI members.

As for other alternatives, there are a number of "fraternal organizations" that offer life insurance to servicemembers. We contacted two of these companies and were informed that they do not and never have included war clauses in their policies.

Chuck/Mike

THE DEPUTY SECRETARY OF VETERANS AFFAIRS
WASHINGTON

SEP 28 1990

The Honorable Alan Cranston
Chairman, Committee on
Veterans' Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find the Department's responses to questions raised by you following the Senate and House Committees' hearing of September 12, 1990, on benefits and services for members of the military.

Sincerely yours,

Anthony J. Principi

Anthony J. Principi

Enclosures
AJP/flc

Questions Submitted by Senator Alan Cranston to the Department of Veterans Affairs

Question 1: Robert J. Engelstad, Senior Vice President of the Federal National Mortgage Association, testified that Fannie Mae has instructed its participating lenders that if a Reservist loan applicant is called to active duty during the processing of the mortgage, the lender still should underwrite the mortgage based on the civilian salary of the Reservist, not the military salary the Reservist will receive during service.

The National Guard Association (NGA), on pages 5-6 of its testimony, asserts that a VA policy requires lenders to underwrite VA-guaranteed home loans for Reservist-applicants on the basis of what they would make on active duty, rather than on their civilian salaries, even if the applicant has not been called to duty or placed on alert.

Question 1A: Is this description of VA policy accurate?

Answer 1A: This is not an accurate description of VA policy. Paragraph 3c of VBA Circular 26-90-36 sets forth VA's policy on reservists who apply for VA home loans. VA has instructed lenders to determine whether reservists have been notified of mobilization of their units. If a veteran is in a Reserve unit with actual orders for mobilization, the loan must be underwritten on the basis of the veteran's income on active duty. If the veteran has not received orders for mobilization, there is no need to underwrite based on the veteran's active duty income. The lender must include in the loan submission a statement which affirms that the veteran's status relative to membership in the Reserves and possible mobilization has been ascertained and considered.

Question 2: Please provide any information VA has indicating whether and to what extent Reservists are experiencing discrimination and what remedies you would consider appropriate.

Answer 2: We have essentially no information indicating that Reserve or National Guard members are being discriminated against because of that status. Regional offices have received many calls from Reserve and National Guard members, some of whom have been called to duty or placed on alert. To date, our field staff have reported no instance of alleged discrimination by the private sector although a few inquirers have apparently expressed concern about that potential. The Loan Guaranty Program has no evidence at this time of discrimination against these persons in lending or underwriting practices. However, as indicated in question #1, there may be some confusion regarding underwriting policy. We have also not been made aware of discrimination by employers, but we defer to the Department of Labor for a definitive view. Finally, there was some media attention suggesting commercial insurance companies were directing agents and brokers not to write new policies for Reserve and National Guard members. We understand commercial companies have assured this is not their policy.

SENATOR CRANSTON

Question 3: Article IV of the Soldiers' and Sailors' Civil Relief Act allows servicemembers to suspend premium payments for up to $10,000 worth of commercial life insurance for up to two years, with payment guaranteed by VA.

During the hearing, Deputy Secretary Principi advocated raising the dollar limit to $120,000 worth of coverage and said that VA also is looking at the adequacy of the standard $50,000 coverage under Servicemen's Group Life Insurance (SGLI).

Question 3A: In addition to raising the coverage limit, do you recommend any other modifications in this title of the Act?

Answer 3A: VA recommends that in addition to increasing the amount of the coverage provided, that the SSCRA (Soldiers' and Sailors' Civil Relief Act) also be amended to provide coverage for group insurance, whether employer provided or paid for wholly or in part by the insured member.

Question 3B: What would be the cost to VA in each of FYs 1991-1995 of raising the limit to $120,000?

Answer 3B: A number of assumptions must be made in order to answer this question. Attachment 1 details those assumptions. Based on those assumptions, we believe that for every 10,000 reservists called to active duty this year (and separated in FY 1991) the cost to the government would be $312,000 in FY 1993 when the two-year, premium-deferral period ends. This could be decreased depending on how successful any debt recovery or offset actions are. There would be no costs in FYs 1991, 1992, 1994 and 1995.

Question 3C: What level of coverage should SGLI provide?

Answer 3C: The Department of Defense had advised us that they intend to recommend that SGLI coverage be increased from its current level of $50,000 to $100,000. VA supports an increase to $100,000.

Question 3D: What would be the cost in each of FYs 1991-1995 of increasing SGLI coverage to the level you suggest?

Answer 3D: Since the program is self-supporting, there would be no cost to the government in increasing the maximum level of SGLI coverage, except for potential claims incurred through the "extra hazards" provision of the law (the law provides that claim costs above normal peacetime levels, plus a 5% margin for fluctuations, will be paid by the individual service branches from their appropriation for military pay).

Over the last three years there has been an average of 2.3 million individuals on active duty. The annual number of active duty deaths per year over that period has been approximately 2,000. Assuming the same active duty force levels in 1990, premiums paid by the servicemembers would cover all deaths up to 2,100 (actual deaths plus a 5% margin for normal mortality fluctuations). As a result of the extra hazards provision of the law, the services would pay for all claims in excess of this amount. For example, if there are hostilities in the Middle East and as a result there are 250 deaths above the 2,100 deaths expected, the cost to the services would be $25 million (250 x $100,000).

SENATOR CRANSTON

Question 4: I have heard concern from doctors and other health professionals who serve in the Reserves, which witnesses echoed during the hearing, about professional malpractice insurance coverage during periods of active duty. Some have suggested modifying the Act to suspend insurance coverage and premiums during service and to provide reinstatement rights without financial or contractual penalties upon completion of active duty. I understand that DOD is working on a proposal to address the malpractice insurance issue.

Please address this malpractice issue specifically with respect to the experiences of VA health-care personnel who are reservists.

Answer: As you know, VA health care personnel are protected from malpractice claims as provided by 38 U.S.C. § 4416. Therefore, there is no impact in this regard on VA personnel who are called to active duty. We are aware of the hardship that private practice physicians would endure if they are required to continue paying for malpractice coverage while they are on active duty and fully covered by DOD. We would defer to the Department of Defense to respond.

Question 5: In an August 23, 1990, memo entitled "Assistance for Federal Employees Called to Active Military Duty", Constance Newman, Director of the Office of Personnel Management, recommended to all heads of Executive Department's and Agencies a number of policy positions favorable to Reservists.

Question 5A: OPM stated that, given the uncertain duration of the recent call to active duty, the most appropriate course of action in most cases is to retain affected employees in a leave without pay status, rather than to separate them from Federal service. What is your Department's policy on this matter?

Answer 5A: VA facilities have been advised to retain such employees in a leave without pay status, rather than to separate them from Federal service.

Question 5B: OPM believes that we must assure departing Federal employees that everything feasible will be done to make it possible for them to return to the same position held before their departure. Therefore, Ms. Newman urged that agencies not reassign current employees to positions held by those performing active military duty. Is this your policy also?

Answer 5B: Yes.

Question 5C: OPM strongly encouraged agencies to pay the employee share, in addition to the Government share, of Federal Employees Health Benefits premiums for any covered employee in a leave without pay status who is performing active military duty during this crisis. What is your position?

Answer 5C: VA would like to pay the employee share of employee health benefits premiums for such employees. OPM has advised that further instructions will be provided to agencies. We are awaiting these instructions before issuing guidance to VA field activities.

SENATOR CRANSTON

Question 5D: OPM urged agencies whose Employee Assistance Programs do not provide services to family members to consider expanding them to help with the special needs family members will have when an employee is performing active military duty. Will your Department be doing this?

Answer 5D: Yes.

Question 5E: OPM encouraged all agencies to inform employees promptly that the Employee Assistance Program can provide them with free, confidential, and helpful counseling and referral services during this time. Has your Department done this?

Answer 5E: Employee Assistance Programs are available at VA facilities to offer counseling and assistance to employees for a variety of problems. We plan to make a special note of offering assistance to such employees when guidance is issued to VA field facilities on items 5C and 5D.

Question 5F: Employees who perform active military duty may request the use of accrued annual leave to their credit. OPM encourages agencies to grant such requests, allowing employees to receive full compensation from their civilian position throughout the period charged to annual leave in addition to their military pay for the same period. What is your Department's policy?

Answer 5F: VA facilities will approve the use of annual leave requested by such employees.

Attachment I

Cost of Expanding Soldiers' and Sailors' Civil Relief Act Per 10,000 Reservists Called to Active Duty

Number of Participants:

1.	Number of reservists called to active duty	10,000
2.	Assume that 50% have commercial life insurance	5,000
3.	Assume that 50% of those with commercial insurance will apply for coverage under SSCRA.	2,500

Amount of Annual Premium to be covered:

1.	Average face amount of commercial coverage	$100,000
2.	Average annual premium for this coverage	$200

Annual Cost to U.S. Government:

1.	Assume that all of those covered are separated within the first year	2,500
2.	Assume that 25% of those separated default on the repayment of the loan	625
3.	Average amount owed per default assuming an average of 2 1/2 years in premium deferral	$500
4.	Cost to U.S. Government per 10,000 reservists called to active duty	$312,500

Using the DOD assumption that all reservists will be separated in fiscal year 1991, the entire cost to the U. S. Government of $312,500 will be incurred in fiscal year 1993 when the two-year, premium-deferral period ends. This, however, may be decreased depending on how successful any debt recovery or offset actions are. There will be no cost to the U.S. Government in fiscal years 1991, 1992, 1994 and 1995.

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-4000

FORCE MANAGEMENT
AND PERSONNEL

NOV 10 1990

Honorable G. V. (Sonny) Montgomery
Chairman
Committee on Veterans' Affairs
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for your letter of September 18 in which you asked for answers to some post-hearing questions relating to our testimony of September 12. Mr. Duncan and I appreciated the opportunity to appear before you and were impressed with the concern you and the other members of your committee expressed for our Service men and women and their families, especially in this time of crisis.

Our answers to your questions are enclosed. Again, thank you for your continued support of those who are sacrificing so much for our Nation.

Sincerely,

Chris

Christopher Jehn

Enclosure:
As Stated

cc:
Honorable Bob Stump
Ranking Republican

QUESTIONS SUBMITTED BY HONORABLE BOB STUMP
TO THE DEPARTMENT OF DEFENSE
AT THE FULL COMMITTEE HEARING
SEPTEMBER 12, 1990
SOLDIERS' AND SAILORS' CIVIL RELIEF ACT

Question: In the case of Reservists who are acting as replacements for military personnel sent to the Middle East, has any thought been given to the changed circumstances they face? Even though they still may be in the United States, they may have moved from a low cost area into a high cost area and at the same time have experienced a considerable reduction in income.

Answer: On August 29, the Assistant Secretary of Defense for Reserve Affairs requested the military departments to consider what legislation may be needed on an urgent basis to support the call of Selected Reserve units and personnel to active duty. In addition to the issues included in our prepared statements, among the matters identified which the Administration has supported are: (1) the provision of the Variable Housing Allowance (VHA) for Reservists ordered to active duty for less than 140 days; (2) authority for payment for unused accrued leave.

Question: Do you believe legislation is needed to prevent discrimination against Reservists in the writing of life insurance policies?

Answer: At this time, we do not believe legislation to prevent discrimination against Reservists in the writing of life insurance policies is needed. However, we continue to monitor problems Reservists are having under the call up, and if the life insurance issue becomes a problem, we will propose appropriate legislation. At the moment, life insurance is available for all Reservists called to active duty; therefore, immediate legislative relief does not appear necessary.

Question: Is the $50,000 Government life insurance policy, Servicemen's Group Life Insurance (SGLI), which has no war exclusion clause, adequate for Reservists and other members of the military services?

Answer: The 1990 DoD Authorization Act requires SecDef to report to the Armed Services Committees on the adequacy of our current SGLI program in providing coverage to aviators and aircrew members. The draft report is currently out for Service review and comment. Once that review is complete, we will share our conclusions and recommendations with you.

QUESTIONS FOR DEPARTMENT OF DEFENSE

Question: The Sixth Quadrennial Review of Military Compensation recommended that a monetary incentive, in the form of a tax credit, be provided to employers of Reservists. Do you still support this recommendation? If you do, please briefly describe for the Committee the tax credit structure that you think would be most effective.

Answer: The Sixth Quadrennial Review of Military Compensation (QRMC) concluded that an employer tax credit to enhance employer support for the National Guard and Reserve should be evaluated. The QRMC developed the framework for a tax credit that would have the following characteristics:

Provide a nonrefundable credit, in addition to an employer's normal deduction for wages paid, of 50 percent of any amount paid by the employer during the military leave of the reservist employee, and a credit of 10 percent of the reservist's salary for military leave uncompensated by the employer.

Establish a limit of $7,500 on the maximum credit for any one employer.

Include a credit for self-employed reservists.

From employers claiming the credit, require certification that they have not been the subject of employment rights litigation initiated by a United States Attorney.

The concept of an employer tax credit, or alternatives which might more effectively achieve the objectives of enhanced employer support, remains under active consideration in the Department.

Question: Does the legislative proposal developed by the interagency task force on VRR include most of the recommendations included in Chapter 7 of the 6th QRMC report?

Answer: The interagency task force began work while the QRMC was in progress. The QRMC staff participated in the task force. Since the work of the task force was in progress, the QRMC set out general recommendations for statutory revision rather than a detailed proposal. The draft legislative proposal now being reviewed within the Administration includes most of the QRMC recommendations.

Question: Please provide the Committee with any fact sheets or pamphlets published by the Department of Defense regarding veterans' reemployment rights.

Answer: DoD has published a guide for Reserve Component Families, "Ordered to Active Duty-What Now?" and a pamphlet, "Rights of Federal Employees who Perform Military Duty." Additionally the following materials are being provided by the National Committee for Employer Support of the Guard and Reserve (NCESGR) to employers and Reservists:

- Issue No. 229 of the Commerce Clearing House Resources Management Service, a four-page article, "The Persian Gulf Callup, Basic Reservists Rights"

- NCESGR "Dear Friend" letter

- NCESGR pamphlet, "Jobs Rights for Reservists and the Members of the National Guard"
- Sections 2021-2026 of Title 38 U.S.C. (Veterans' Reemployment Rights (VRR) Statute)
- US DoL/VETS' Fact Sheet OASVET-90-10 (REEMPLOYMENT RIGHTS FOR RETURNING VETERANS)
- US DoL/VETS' Fact Sheet OASVET-90-9 (JOB RIGHTS FOR RESERVISTS AND MEMBERS OF THE NATIONAL GUARD)
- US DoL/VETS' News Release dated August 17, 1990, titled, "RESERVISTS CALLED TO ACTIVE DUTY HAVE JOB RIGHTS"
- NCESGR's "Questions and Answers about Reemployment Rights."

Copies of these materials have been provided to the Committee.

Question: How do National and State Employer Support Committee Ombudsmen and the Department of Labor coordinate their respective roles and responsibilities regarding veterans' reemployment rights?

Answer: NCESGR Ombudsmen and Department of Labor representatives work together, both in providing information and technical assistance and in the resolution of real and perceived problems. When a call is received at the NCESGR 800 hotline, the caller is informally counselled on the aspect of the law that applies to the situation. The caller is given the name of the nearest Department of Labor representative. The caller contacts the local Ombudsman, who has 7 days to resolve the question. If resolution is not possible, the case is referred to a Department of Labor representative. The Department of Labor then has the responsibility for finding a solution.

Question: What efforts are being made by the military services to ensure that Reservists being called to active duty are fully aware of their reemployment rights?

Answer: The DoD publication, "Ordered to Active Duty - What Now?" which has been provided to all Reservists activated in support of Operation Desert Shield, includes a discussion of reemployment rights and contact points in case problems arise. In addition, the National Committee for Employer Support of the Guard and Reserve has a long-standing program of information and of educating the public, employers, and Reservists concerning reemployment rights through their Public Affairs and awards programs, ombudsman, field operations, and affiliated volunteer committees. Since the activation, NCESGR has initiated the following:

a. The Executive Director visited and coordinated with the offices of the Assistant Secretaries for Manpower and Reserve Affairs, offices of Guard and Reserve Chiefs, and family support agencies of each military department to coordinate common efforts.

b. The NCESGR toll free number was distributed to ensure problems related to employment were referred to NCESGR.

c. Numerous interviews were given to the print media, television, and radio such as the Washington Post, Los Angeles Times, USA Today, Cable News Network, Financial News Network, Univision News (Spanish Language), and Voice of America.

Question: The call up of nearly 48,000 members of the Selected Reserve for the Desert Shield operation has certainly reminded employers across the country of the accuracy of a statement you made 2 years ago before the subcommittee on Education, Training, and Employment. You pointed out that the President has statutory authority to call to active duty up to 200,000 members of the Selected Reserve without even declaring a national emergency.

a. Do you expect the recent activation of the Selected Reserve to result in an increase in violations of VRR law now that employers are fully aware of the potential impact of hiring individuals who are members of the Guard and Reserve?

b. Will you increase and expand efforts to educate employers regarding the importance of the Selected Reserve to our national defense?

Answer: Employers contacting agencies within the Office of the Assistant Secretary of Defense for Reserve Affairs have consistently voiced support of employee-Reservists that have been called to active duty in support of Operation Desert Shield. Only a few of the 1,400 calls received by the National Committee for Employer Support of the Guard and Reserve were from non-supportive employers or from employees that were having difficulties with their employers. The Desert Shield Operation has brought home to employers the critical role of the Guard and Reserve member in the Total Force. That increased awareness, combined with continued or increased employer education by the National Committee for Employer Support of the Guard and Reserve, should minimize violations of the law.

Question: On page 7 of your testimony, you raise the issue of tuition reimbursement for Selected Reservists who are called to active duty after having paid school tuition. Please keep the Committee informed regarding the negotiations in which you are now engaged with certain colleges and decisions you make concerning the need for legislation.

Answer: The American Council on Education is pursuing uniform guidelines for tuition reimbursement/credits where students are ordered to active duty and unable to attend educational activities. At a meeting of many schools and institutions, there was wide-spread support for this effort to ensure members are not disadvantaged in these circumstances. Formal guidelines regarding tuition reimbursements/credits are expected by year's end.

Question: It has been suggested that the SSCRA gives an unfair advantage to persons called to active duty in that it would permit an individual to receive advances on a prearranged line of credit, such as one secured by a second mortgage, and then demand that the interest rate be reduced to 6 percent. What is your view of this? Does the act permit this?

Answer: The 6-percent cap on debts/obligations does not apply to debts incurred after entry on active duty. In addition, the Act's limitations can be disregarded if creditors demonstrate to a court that the debtor's ability to satisfy the stated rate of interest is not materially affected by active military service. Thus, the Act nicely balances the disruption that a sudden call up and loss of salary brings to personal affairs with the legitimate needs of creditors. We know of no case where a Reservist assumed an obligation prior to call up solely to take advantage of the interest cap.

Question: There seems to be a great deal of uncertainty in the area of employer-provided health insurance. Would you consider undertaking a review of this matter in consultation with Mr. Collins?

Answer: The Internal Revenue Service recently provided clarifying information regarding the impact of Reserve activation on employers' obligations to provide continuing health care under Internal Revenue Code section 4980B (COBRA requirements). We expect further guidelines. At that point, we would consider undertaking a review of this matter with the Department of Labor.

Question: Should persons called to active duty be allowed to continue contributing to an employer's retirement fund during the period of active duty? What about requiring the employer to continue employer contributions at the same level as when the member was called up?

Answer: The Internal Revenue Service, the Department of Treasury, and the Department of Labor, in coordination with the Department of Defense, are involved in an effort to identify, analyze, and clarify a multitude of questions regarding the impact of Reserve activation in these matters. In many cases, while the Department of Defense is not the primary office to resolve these matters, we have been and will continue to be consulted. It would be inappropriate to comment further, pending the outcome of this joint effort.

Question: The Sixth QRMC (Quadrennial Review of Military Compensation) suggested that the Act's protection against eviction proceedings be triggered by a rental rate equal to the member's housing allowance. What are the current levels of these allowances? How are they revised and updated? I am not aware that any such legislative proposal has been received by the Congress. Does the Department support such a change?

Answer: Housing allowances vary by paygrade and locale, are revised annually, and published in a complicated table. As a result, DoD feels a single, annually revised amount for eviction protection cut off is more appropriate than basing eviction protection on such cumbersome tables. Legislation proposing a level of $750 has recently been submitted to the Congress.

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

OCT 9 1990

Senator Alan Cranston
Chairman, Committee on Veterans' Affairs
United States Senate
Washington, D.C. 20510-6375

Dear Mr. Chairman:

Thank you for your letter of September 13 in which you asked that we respond to some post-hearing questions regarding our testimony of September 12. We appreciated the opportunity to appear before you and share our thoughts with you. The concern you and the other members of your committee expressed for our Service men and women, and their families, is especially meaningful in this time of crisis.

Our response to the questions that you proposed is enclosed. Also attached is a copy of our proposed legislation regarding professional malpractice liability. Proposed legislation on the Soldiers' and Sailors' Civil Relief Act, that we discussed with you at the hearing, is in the final stages of coordination within the Executive Branch. We will carry it to you as soon as it is cleared.

Again, thank you for your concern for those who are sacrificing so much for our Nation. Your visit to the Middle East gave an immediate and significant boost to those brave men and women and their families; your support for our proposed legislation will continue that boost over the longer haul.

Sincerely,

Christopher Jehn
Christopher Jehn
Assistant Secretary
of Defense
(Force Management & Personnel)

Steve Duncan
Stephen M. Duncan
Assistant Secretary
of Defense
(Reserve Affairs)

Enclosure:
As stated

cc:
Honorable Frank H. Murkowski
Ranking Republican

Question: Please provide any information that indicates whether and to what extent reservists are experiencing discrimination in such fields as housing, credit, and insurance, and what remedies would be appropriate.

Answer: At this time we do not possess sufficient information to determine whether reservists are being adversely discriminated against in fields such as housing, credit and insurance. The very positive response of the reservists who have been ordered to active duty and the many visible acts of banks, employers, insurance companies, and other public and private groups supporting the reservists who are serving are highly encouraging. The calls received by the National Committee for Employer Support of the Guard and Reserve have almost all been to seek specific information, and no serious employment issues have come to our attention. While there may be instances of discrimination, they will probably take time to surface. This is because matters such as these are personal between the reservist and the landlord, creditor or insurer. The Department of Defense hears about such matters when, and if, reservists come to their commands for help.

While we have received no reports indicating that adverse discrimination is occurring, we are continuing to look hard for adverse discrimination--through our commanders, legal assistance offices, family centers and chaplains. If we find adverse discrimination, we'll take immediate steps to help resolve it. If resolving the problem requires legislation beyond that which we addressed in our testimony, we'll carefully consider how best to accomplish that goal.

Question: Mr. Secretary, I have heard concern from doctors and other health professionals who serve in the Reserves, which witnesses echoed during the hearing, about professional malpractice insurance coverage during periods of active duty. Some have suggested modifying the Soldiers' and Sailors' Civil Relief Act to suspend insurance coverage and premiums during service and to provide reinstatement rights without financial or contractual penalties upon completion of active duty. I understand that OPM is working on a proposal to address the malpractice insurance issue.

A. Is a physician who is in the Reserves permitted to continue some limited private practice while serving on active duty? If legislation were enacted to allow or require suspension of coverage and premiums during reserve active duty, should the law make some exception for health professionals who engage in private practice during active duty?

Answer: Reserve physicians activated in connection with OPERATION DESERT SHIELD would be subject to current Department of Defense and Military Department policies and regulations governing off-duty employment on a case-by-case basis, within the framework of established regulatory restrictions. Local commanders are expected to be especially judicious in granting requests for off-duty employment in view of the impact of OPERATION DESERT SHIELD on the staffing of medical facilities. For example, there may be very justifiable instances where reservists assigned to military facilities located near their private practice are given permission to continue, on an off-duty basis, treatment of their previous patients to avoid discontinuity of care or abandonment of certain patients.

Military health care providers are responsible for their own insurance coverage for approved off-duty employment activities. The attached legislative proposal developed by the Department to remedy the malpractice insurance problem for activated reservists would not cover off-duty, professional activities, and the Department recommends that such activities be excluded from any legislation enacted in this regard.

B. Some insurers, such as the Physicians Insurance Company of Wisconsin, voluntarily are allowing suspension of coverage and premiums for active-duty reservists.

(i) Please describe what steps the Department is taking to encourage voluntary measures like this and whether voluntary measures mean there is no need for legislation?

(ii) Please address this malpractice insurance issue specifically with respect to the experiences of health-care personnel who are reservists?

ANSWER: The Department has obtained information that a number of insurers have taken voluntary steps to help relieve malpractice insurance expenses for ~~their~~ policyholders who are activated for military duty. These voluntary steps will help many reservists and retired members activated in connection with OPERATION DESERT SHIELD, and we are continuing to monitor these recent developments. However, the Department remains strongly in favor of legislative protection for reservists and retirees who are insured under the claims-made type of policy. The insurers' voluntary measures vary in the nature and degree of relief offered and, given that nearly 300 companies write medical malpractice insurance, the overall effects of the private sector's response will not fully resolve the issue. It is imperative that legislation be enacted to provide a universal and consistent remedy for activated reservists and retirees participating in the present contingency, as well as in future urgent operational missions. The Department believes that the protections afforded by our proposed legislation, copy attached, are essential not only to ensure equitable resolution of present problems but also, and perhaps even more importantly, to remove any uncertainty about the effects of malpractice insurance on reservists activated in the future. Lingering uncertainties may otherwise pose a serious disincentive for reservists to continue their reserve affiliation in the future, and could also inhibit Reserve recruiting for years to come. Given the substantial difficulties the Department has long experienced attracting health professionals into the Reserve components and reducing critical wartime medical personnel shortfalls, it is of vital importance that prompt and positive legislative action be taken to eliminate the potentially serious future effects of this issue upon recruitment and retention of reserve health professionals.

- Available information indicates that reserve physicians insured under the claims-made type of malpractice coverage are experiencing various forms of relief under these voluntary measures, depending on the specific approach various companies are choosing to take. These approaches include suspension of premiums, partial reduction of premiums and streamlining of administrative processes for obtaining suspension of coverage endorsements normally offered by some companies. For example, the Physicians Insurance Company of Wisconsin has informed us that it is honoring requests from activated policyholders for that company's usual suspension of coverage provisions, up to a

1 year limit, without the paperwork and signature normally required. In connection with that company's suspension of coverage endorsement, the policyholder's premiums are reduced depending on class of risk, length of time as a policyholder and previous claims history. The Physicians Insurance Company of Wisconsin has advised that it is not suspending premiums during the activation period, as have a number of other insurers. Suspension of premiums during activation, the most effective remedial measure to assist activated reservists and retirees, is the basic approach contained in the Department's legislative proposal.

Question: In an August 23, 1990, memo entitled "Assistance for Federal Employees Called to Active Military Duty," Constance Newman, Director of the Office of Personnel Management, recommended to all heads of Executive Departments and Agencies a number of policy positions favorable to reservists.

A. OPM stated that, given the uncertain duration of the recent call to active duty, the most appropriate course of action in most cases is to retain affected employees in a leave without pay status, rather than to separate them from Federal service. What is your Department's policy on this matter?

Answer: The Department of Defense supported the development of this position and we continue to fully support it as set out in the memorandum.

B. OPM believes that we must assure departing Federal employees that everything feasible will be done to make it possible for them to return to the same position held before their departure. Therefore, Ms. Newman urged that agencies not reassign current employees to positions held by those performing active military duty. Is this your policy also?

Answer: The Department of Defense strongly supports this policy within constraints imposed by OPERATION DESERT SHIELD.

C. OPM strongly encouraged agencies to pay the employee share, in addition to the Government share, of Federal Employees Health Benefits premiums for any covered employee in a leave without pay status who is performing active military duty during this crisis. What is your position?

Answer: The Department of Defense supports such payments and is awaiting final authority from OPM on the scope of this program.

D. OPM urged agencies whose Employee Assistance Programs do not provide services to family members to consider expanding them to help with the special needs family members will have when an employee is performing active military duty. Will your Department be doing this?

Answer: The Department of Defense fully supports this excellent suggestion from OPM. We will expand Employee Assistance Program assistance to family members wherever possible. In addition, the Services' legal assistance and family support programs are available to help family members of all reservists, including Federal employees, called to active duty.

E. OPM encouraged all agencies to inform employees promptly that the Employee Assistance Program can provide them with free, confidential, and helpful counseling and referral services during this time. Has your Department done this?

Answer: The Department of Defense has widely distributed copies of OPM's guidance so that all Federal employees called to active duty will be able to understand and take advantage of the programs OPM discusses.

F. Employees who perform active military duty may request the use of accrued annual leave to their credit. OPM encourages agencies to grant such requests, allowing employees to receive full compensation from their civilian position throughout the period charged to annual leave in addition to their military pay for the same period. What is your Department's policy?

Answer: The Department of Defense supported the development of this position and we continue to fully support the OPM recommendation.

Federal
Home Loan
Mortgage
Corporation

Judith A. Kennedy
Vice President
Government Affairs
202/789.4750

September 24, 1990

The Honorable Alan Cranston
Chairman
Committee on Veterans' Affairs
United States Senate
Washington, DC 20510-6375

Dear Chairman Cranston:

Thank you for your letter of September 14, 1990, in regard to the Soldiers' and Sailors' Civil Relief Act of 1940. On behalf of Freddie Mac, I am pleased to have this opportunity to answer your questions.

Your first set of questions were in regard to a major bank's program allowing reservists to suspend payments of their loans while on active duty. Regular payments would resume upon completion of military service, and the suspended payments apparently would be tacked onto the end of the term of the loan. Your questions and our answers are as follows:

1A. Do you believe this kind of program might be offered by your member or participating institutions?

Freddie Mac purchases mortgages from over 3000 mortgage lenders ("Seller/Servicers") that usually continue to service the mortgages on our behalf. Therefore, all special forbearance is offered by Freddie Mac and implemented by our Seller/Servicers. Payment deferral is one of a number of standard programs available to all borrowers, including members of the armed forces, on a case-by-case basis. Of course, a service member would have to provide justification to obtain such relief in addition to the interest rate reduction required by the Act.

1B. Does such a program entail any financial advantages to a lender in light of the 6 percent interest rate cap in section 206 of the Act?

If the interest rate cap applies only to payments the borrower actually makes while in active military service, then a deferral program would financially benefit lenders. Deferred installments would cause less of a loss to the lender than forfeiting the amount of interest in excess of the six percent cap.

However, if the borrower remains entitled to the interest rate reduction on payments deferred until completion of military service, then such a program provides no advantages to lenders.

In the absence of a court ruling or amendment to the Act clarifying this matter, we are assuming that service members are entitled to the interest rate cap on deferred payments.

1776 G Street, N.W.
PO Box 37347
Washington, DC 20013-7347

1C. What should be the result under the Act if a reservist who takes advantage of this type of offer returns from active duty and retroactively seeks to invoke his or her right to reduced interest payments for the months that would have been payable during the period of service, but actually are being paid on a delayed basis?

We would assume the reservist in this scenario is entitled to reduced interest payments.

Your second set of questions related to alleged discriminatory practices by lenders against reservists:

2A. Does your organization allow this type of discrimination by your members or participants?

We have instructed our Seller/Servicers not to factor an applicant's military status into the underwriting process for mortgages they intend to sell to us.

2B. What measures has your organization taken or does it intend to take to discourage this practice by your members or participants?

In addition to the above, we have assured our Seller/Servicers that we will continue to purchase mortgages they make to service members.

2C. Please look into this matter and submit for the record any information you can provide regarding whether and to what extent reservists are experiencing discrimination in the credit and housing fields and what legislative remedies your organization would support.

To date we are unaware of any acts of discrimination against service members by any of our Seller/Servicers. We believe the best legislative remedy for this problem is to address its cause -- the risk lenders perceive from the interest rate cap provision. In our testimony we recommended the Congress consider if this provision is realistic in today's market environment. Given the increasingly precarious condition of our financial system, we believe a thorough review of the contemporary application of this Act is needed.

Again, we appreciate the opportunity to address your questions on these matters. Please do not hesitate to contact me if I may be of further assistance.

Very truly yours,

Judith A. Kennedy

Judith A. Kennedy

USL
UNITED STATES LEAGUE of SAVINGS INSTITUTIONS
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J. DENIS O'TOOLE
Executive Vice President
for Government Affairs/Operations

BY MESSENGER January 4, 1991

Honorable G.V. (Sonny) Montgomery
Chairman, Committee on Veterans' Affairs
335 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In response to the questions submitted to us following the joint hearings of the House and Senate Committees on Veterans' Affairs, we enclose our response for inclusion in the official record.

On behalf of the U.S. League and its member institutions, we would like to once again thank you for the opportunity to present our views on this important national issue. We look forward to the opportunity to work with you and members of the Committee.

Sincerely,

Denis O'Toole

J. Denis O'Toole

Enclosure

ANSWERS TO QUESTIONS SUBMITTED BY SENATOR ALAN CRANSTON

1. Question one, which had three parts, referred to a large bank which voluntarily implemented a program under which it allows reservists on active duty to suspend payments, including both principal and interest on all loans.

   A. Yes, U.S. League member institutions might consider offering such a program, particularly in those instances where there are only a few cases to administer. Suspension of payments however will impact the institution's cash flow and earnings. This being the case, the institution would have to check with the Office of Thrift Supervision before implementing such a program. Another factor to consider would be the role of the secondary market agencies and their guidelines on waiving principal payments.

   B. It is difficult to see any significant or meaningful financial advantage in any such program.

   C. Consideration of a reservist's request to retroactively invoke his or her right to reduced-interest payments would need to be addressed on a case-by-case basis.

2. Question two, which also had three parts, related an incident of discrimination by a broker who had been retained by a reservist to help sell his house. The broker was quoted as stating that lenders are looking for excuses to deny loans to reservists.

   A/B/C U.S. League members do not tolerate this or any other form of discrimination. The U.S. League continually and actively advises its members -- via seminars, meetings and publications -- on nondiscrimination rules and standards that must be met. We have not seen any pattern or reports of a pattern of discrimination with regard to treatment or reservists or other persons.

COMMITTEE QUESTIONS FOR THE U.S. LEAGUE OF SAVINGS INSTITUTIONS

1. **Explain the impact the Soldiers and Sailors Civil Relief Act will have on your industry. How many loans will be affected?**

It is very difficult to specify how many loans are and could be impacted by this law. It should be pointed out however that given the fact that savings institutions have extensive holdings of home mortgage loans -- along with consumer loans which are also covered under the act -- their portfolios will be significantly impacted.

2. **What forbearance will be offered if a reservist that is called up seeks a postponement of principal? Would you re-amortize the mortgage once the reservist resumed civilian life?**

The decision with regard to the postponement of principal will likely be made on a case-by-case basis. It appears that most institutions grant only interest relief. As you know, the act does not address principal nor does it talk of modifying the maturity date or reamortizing the loan. Ideally, both the service member and the lender should seek a mutually satisfactory forbearance agreement. If it's clear the service member cannot pay principal or needs to have the maturity date and other terms restructured, we expect it would be done.

3. **Does the S&L industry have as much flexibility as other panelists in offering forbearance under the provisions of this act -- given the scrutiny imposed by bank regulators.**

While savings institutions regulation has intensified, our members try to provide all relief called for by the act and to extend all other reasonable cooperation to service members. We can't imagine that the Office of Thrift Supervision expects us to do otherwise.

However, as pointed out in my testimony, the calling up of a Guard unit or Reserve unit in a local community could have a significant economic impact on the lending institution -- particularly its capital position. Intergovernmental coordination is needed to ensure that an institution meeting its obligations under the Soldiers and Sailors Relief Act does not simultaneously face severe regulatory sanctions for temporary failure to meet required capital levels or other standards.

4. **If a reservist is unaware of the act and continues to pay a higher interest rate, could the difference be recouped?**

This is another instance where institutions will make a case-by-case decision.

5. **Under the act, under what circumstances would you petition a court to reinstate a higher mortgage interest rate?**

Based on conversations with the membership, it is unlikely that institutions will seek court approval to charge an interest rate higher than what the relief provisions provide. It's important to keep in mind, however, that the act was intended to provide relief in the case of economic hardship caused by military service. Where such hardship has clearly not occurred, a given institution might resist granting relief. However, even in cases when no evidence of economic hardship exists, I suspect the relief will be provided whether justified or not.

6. **During a service member's tour of active duty, will delinquencies be reported to credit bureaus?**

We need to separate the issue of delinquency from that of interest rate relief. Whether or not relief is granted, timely payments are expected. To protect the integrity of the credit reporting system, it is difficult to see any way an institution can fail to submit delinquent information to the credit bureaus.

7. **Are you treating dual income families differently than single income families under provisions of the act?**

Again, this will be a case-by-case decision. Going back to the 1940's, dual income families were not as commonplace as they are today. Some circumstances would not likely fit the description of having suffered economic hardship, however, since we are dealing with a family unit and not only economic but also social hardships, most institutions would probably grant relief.

8. **Would home equity lines of credit be treated in a manner similar to home mortgages?**

The act makes no exclusions for types of credit; therefore, whether it's home equity lines, home mortgages or auto loans, identical relief provisions prevail.

○